

**CASE**

**NUMBER:**

99 - 484

BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-484

**FILED**

JUN 12 2000

PUBLIC SERVICE  
COMMISSION

RE: IGLOU INTERNET SERVICES, INC.

COMPLAINANT

V.

BELLSOUTH TELECOMMUNICATIONS, INC.

DEFENDANT

Pursuant to notice duly given, the above styled matter came to be heard May 26, 2000, at 9:00 a.m. in the hearing room of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; The Honorable B. J. Helton presiding.

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1 CHAIRMAN HELTON:

2 We're here in the case of the matter of IgLou  
3 Internet Services, Incorporated, Complainant,  
4 versus BellSouth Telecommunications, Incorporated,  
5 Defendant, Case Number 199-484. Can we have  
6 appearances of the parties, please?

7 MR. AMLUNG:

8 Jonathan Amlung for IgLou Internet Services, the  
9 Complainant.

10 MR. GREGOIRE:

11 Danny Gregoire, IgLou Internet Services,  
12 Complainant.

13 MS. CHAMBERS:

14 Good morning. Dorothy Chambers, counsel for  
15 BellSouth, and with me is co-counsel Langley  
16 Kitchings.

17 MS. DOUGHERTY:

18 Any DOUGHERTY for the Public Service Commission.

19 CHAIRMAN HELTON:

20 We usually ask for public comment at the beginning  
21 of a hearing, but since this is between the two  
22 parties, I doubt that there's anyone in the public  
23 that wishes to give comments, am I correct?

24 Hearing none, we will proceed.

1 MR. AMLUNG:

2 Commissioner HELTON, the parties in this case have  
3 entered into an agreement of sorts, and I don't  
4 want to speak out of turn, so I will let Ms.  
5 Chambers clarify, but we've agreed to waive--  
6 IgLou's agreed to waive cross-examination of three  
7 of the BellSouth witnesses, that being, Mr.  
8 Rucker, Mr. Mefford and Mr. Johnson; in turn,  
9 BellSouth is going to stipulate that they would  
10 have testified to what is in their testimony  
11 already submitted. And I believe Ms. Chambers is  
12 going to waive cross-examination of several of our  
13 witnesses. I'll let her--

14 MS. CHAMBERS:

15 That's correct. In the interest of time, we are  
16 making the same stipulation with respect to Drew  
17 Curtis, Mark Kinney, Norman Schippert, Mary Jane  
18 Shadowen, Dean Brooks, Jeff McAdams and Matthew  
19 Danak and waive cross-examination.  
20 We'd also move that the responses to the data  
21 requests by both parties be placed in the record.

22 CHAIRMAN HELTON:

23 So ordered. With that, you may call your first  
24 witness.

1 MR. AMLUNG:

2 Thank you. At this time IgLou calls Ms. Sue  
3 Ashdown.

4  
5 The witness, SUE ASHDOWN, after having been duly  
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. AMLUNG:

9 Q Good morning.

10 A Good morning.

11 Q Please state your name and business address for  
12 the record please?

13 A Sue Ashdown. My business address is 1047 Lake  
14 Street, Salt Lake City, Utah, 84105.

15 Q What is your background and relevant experience to  
16 this case?

17 A I am the Executive Director of the American  
18 Internet Service Provider Association and the  
19 former Executive Director of the U. S. Internet  
20 Service Provider's Alliance and I am the Executive  
21 Director of the Coalition of Utah Independent  
22 Internet Service Providers. I also retain a part  
23 ownership share of Ex-Mission, which is an  
24 Internet Service Provider in Utah.

- 1 Q Thank you. Have you submitted direct testimony in  
2 this case?
- 3 A Yes.
- 4 Q Have you also submitted rebuttal testimony in this  
5 case?
- 6 A Yes.
- 7 Q What was the purpose of your direct testimony?
- 8 A The purpose of my direct testimony was to speak to  
9 the similarities between the complaint--the IgLou  
10 complaint and the complaint that the Utah Internet  
11 Service Provider's filed before the Utah Public  
12 Service Commission in June of 1998. And, also, to  
13 speak to the similarity of the experiences between  
14 Internet Service Providers in other Bell  
15 territories across the country since I developed  
16 relationships with those Internet Service  
17 Providers over the years, both as the Director of  
18 the Utah Coalition and in my position as the  
19 Director of the National Associations.
- 20 Q What was the purpose of your rebuttal testimony,  
21 was it the same?
- 22 A The purpose of my rebuttal testimony was the same.
- 23 Q As you sit here today, do you have any additions,  
24 modifications or deletions from that testimony

1 that you submitted, both direct and rebuttal?

2 A No.

3 Q If you would be testifying today, would that  
4 testimony be the same as the testimony that you  
5 submitted previously?

6 A Yes.

7 MR. AMLUNG:

8 At this time, I pass the witness for  
9 cross examination.

10 CHAIRMAN HELTON:

11 Thank you. Ms. Chambers.

12 MS. CHAMBERS:

13 Thank you, Commissioner.

14

15 CROSS EXAMINATION

16 BY MS. CHAMBERS:

17 Q Ms. Ashdown, good morning.

18 A Good morning.

19 Q I'd like you to tell us what information you've  
20 looked at specifically in preparation for this  
21 hearing.

22 A I have looked at the testimony of IgLou's  
23 witnesses and I have looked at the testimony of  
24 BellSouth's witnesses and the rebuttal testimony

1 of both.

2 Q Have you done any other information gathering?

3 A Specifically--

4 Q About BellSouth?

5 A I have relied on the information that the  
6 complainant's have provided me for BellSouth.

7 Q Which is what?

8 A Information regarding the prices, the roll out,  
9 the general terms of the offering of DSL in  
10 Kentucky.

11 Q Is there information they provided to you in  
12 addition to what's in their testimony?

13 A Is there--are you talking about the data requests,  
14 have I looked at the data requests? I have not  
15 looked at them very closely.

16 Q You have looked at them, but not closely?

17 A I have looked--I have--I recall looking at one  
18 piece of information regarding service calls to  
19 BellSouth.

20 Q Okay. Have you done any other independent  
21 investigation, other than that?

22 A No.

23 Q Did anyone help you gather information for your  
24 testimony other than what you've told us here

1 today?

2 A Did anyone help me gather information?

3 Q Do you have an assistant or an aide or anyone like  
4 that?

5 A No.

6 Q Okay. Did you write the answers to your questions  
7 yourself?

8 A Yes.

9 Q Did you write the questions to your testimony  
10 yourself?

11 A Yes.

12 Q Okay. If you don't mind, I'd like you to turn to  
13 your direct testimony, if you have it available.

14 A I'll have to get it.

15 Q Thank you. Do you have any academic credentials  
16 that qualify you in this area?

17 A My academic credentials are that I have a  
18 Bachelors Degree from the University of Utah in  
19 journalism and I have worked as an Internet  
20 Service Provider in the industry since 1994.

21 Q Okay. Prior to 1994, did you have any other  
22 experience, professional experience, of any kind?

23 A Prior to 1994, I'm not aware that there were many  
24 people that had experience of any kind in the

1 Internet industry.

2 Q Well, what was your work or employment experience  
3 at that time?

4 A Prior to that I was a media planner in an  
5 advertising agency.

6 Q Okay. So, you did advertising?

7 A Uh-huh.

8 Q Okay. Are you aware of the FCC's line sharing  
9 order?

10 A Yes.

11 Q Okay. Do--you have agreed that line sharing's a  
12 step in the right direction on high speed Internet  
13 connectivity.

14 A I think it's a step in the right connection on  
15 high speed Internet connectivity, that's correct.  
16 Yes.

17 Q Okay. You are familiar with what's happening in  
18 the market for high speed Internet connectivity?

19 A Yes.

20 Q Okay. Do you consider yourself--just so we know  
21 what your area of expertise is, do you consider  
22 yourself an expert on high speed Internet  
23 connectivity with respect to all aspects?

24 A I do not consider myself an expert in the

1 technical aspects of high speed Internet  
2 connectivity. But the business--

3 Q Okay. What--

4 A But the business aspects, I do.

5 Q The business aspects. What about the market  
6 aspects?

7 A I am not an economist but I do have significant  
8 experience in the market aspects, since as the  
9 General Manager of my company, Ex-Mission in Utah,  
10 we were responsible for rolling out DSL in that  
11 market.

12 Q Okay. Do you consider your expertise to be  
13 nationwide?

14 A I consider my expertise to be nationwide in terms  
15 of the relationships that I have developed with  
16 Internet Service Providers that have been telling  
17 me very similar things to what the Internet  
18 Service Providers in Utah experienced.

19 Q Okay. So, it's derived from hearsay information  
20 from other Internet providers?

21 A I don't know that I would classify that as  
22 hearsay. I would say that I have been involved in  
23 some of the collection of information that other  
24 Internet Service Providers in other Bell

1 territories have been putting together for the FCC  
2 to investigate Bell compliance with federal  
3 regulations.

4 Q Well, let me step back, have you done any direct  
5 gathering of that information yourself?

6 A No. The ISPs gathered that information  
7 themselves--

8 Q So--

9 A --and they share it with me.

10 Q So, you've gotten it second hand?

11 A Well, I did not collect it myself, that's correct.

12 Q So, you've gotten it from other people or other  
13 providers?

14 A Yes.

15 Q Okay. Do you consider yourself an expert on the  
16 --what's going on in Utah with the Internet  
17 providers?

18 A Absolutely.

19 Q U.S. West territory?

20 A I am quite familiar with U.S. West territory,  
21 since U.S. West is the provider in Utah.

22 Q Okay. What about BellSouth territory?

23 A BellSouth territory, obviously, I don't provide  
24 service in BellSouth territory, but I have been

1 working with these providers here for some time to  
2 understand the problems that they're experiencing.

3 Q Do you consider yourself an expert in it or just  
4 familiar with it?

5 A I am familiar with it. Obviously, I don't have  
6 the same level of familiarity with BellSouth's  
7 tariff and procedures as I do with U.S. West's,  
8 but I can say that the practical consequences are  
9 very similar.

10 Q What about knowledge about Kentucky with respect  
11 to the Internet market? Are you an expert in that  
12 area?

13 A I would not present myself as an expert in the  
14 Kentucky market.

15 Q Are you familiar with it?

16 A Am I--yes. I am familiar with it.

17 Q Okay. On BellSouth's tariff's, have you read any  
18 of BellSouth's tariff's or some?

19 A No. I have not had access to BellSouth's  
20 tariff's.

21 Q Okay. Do you know what states BellSouth operates  
22 in?

23 A I can't name the states exactly. I know that you  
24 operate in Alabama, in Florida, in Georgia and

1 Kentucky, you probably operate in some other  
2 southern states. I don't--I can't list the states  
3 as well as I can list the fourteen states in U.S.  
4 West territory, that's correct.

5 Q Do you know how many states?

6 A I believe that's it's a nine state territory.

7 Q Okay. Turning to Louisville and to Kentucky, do  
8 you know how many ISPs there are in Kentucky?

9 A I do not remember how many ISPs there are in  
10 Kentucky.

11 Q Can you give me a ballpark figure?

12 A I think there are probably about a hundred  
13 Internet Service Providers in Kentucky.

14 Q In all of Kentucky?

15 A Yes.

16 Q Okay. How many Internet Service Providers, is it  
17 your testimony, are in Louisville?

18 A I don't know the exact number of Internet Service  
19 Providers in Louisville.

20 Q I'm sorry.

21 A I do not know the number of Internet Service  
22 Providers in Louisville exactly.

23 Q If not exactly, can you give me a ballpark number?

24 A I cannot give you a ballpark number. It was not

1 my intention through my testimony to be an expert  
2 on the Louisville market or how many Internet  
3 Service Providers but more to testify as to the  
4 practices of BellSouth and the consequences that  
5 it is having on the market that are probably going  
6 to be very similar to what happened in the Utah  
7 market.

8 Q Okay. I think you said that before. My question  
9 is really just to find out what your area of  
10 expertise is and if it's--if that's not your area,  
11 that's fine. I just wanted clarification. Are  
12 you able to testify about how many competitive  
13 local exchange companies, CLECs, there are in  
14 Kentucky?

15 A No. I'm not. And there--just as I would not be  
16 able to testify to that in Utah either. There are  
17 a whole bunch of competitive local exchange  
18 carriers who have filed to do business in Utah who  
19 have not actually come to market and I suspect  
20 that the same is true here.

21 Q But you don't know one way or the other?

22 A I don't know one way or the other about what?

23 Q About Kentucky and how many CLECs are doing  
24 business--

1 A I do not know--  
2 Q --in Kentucky?  
3 A --how many CLECs are doing business in Kentucky.  
4 Q What about how many CLECs are doing business in  
5 Louisville?  
6 A I do not know how many CLECs are doing business in  
7 Louisville.  
8 Q Another means of obtaining high speed Internet  
9 connectivity is over cable modem, is that not  
10 true?  
11 A Yes. That's true.  
12 Q Are you familiar with the cable modem market?  
13 A Somewhat familiar with the cable--  
14 Q Okay. Do you know, for example, what the price  
15 for a cable modem high speed Internet connection  
16 in this area of the country is?  
17 A It's around \$40.00, I believe.  
18 Q Have you checked that with--  
19 A No.  
20 Q --anything?  
21 A I have not checked that.  
22 Q What do you base that on?  
23 A I based that on my--the information that I have  
24 collected from Internet Service Providers across

1 the country as to what their contending with in  
2 terms of the competitive market in the cable  
3 market. Nationwide that's the average price for  
4 cable Internet access.

5 Q Okay. Do you have any idea what it actually is  
6 here in Kentucky--

7 A No. I do not--

8 Q --or Louisville?

9 A --have any idea what it is actually here in  
10 Kentucky.

11 Q Okay. You have been asked by IgLou to comment on  
12 what IgLou is alleging in this case and compare it  
13 with your experiences in Utah, is that a correct  
14 characterization of your reason for testifying?

15 A I would say I was asked to compare it with the  
16 experience of Internet Service Providers, not only  
17 in Utah but the other Internet Service Providers I  
18 am in contact with throughout the country.

19 Q Okay. In your direct testimony, and I would ask  
20 you if you would look at page 2, line 41, you were  
21 asked to compare the ISPs experience in Utah with  
22 the ISPs experience in Kentucky and elsewhere?

23 A Yes.

24 Q Where in that answer, on pages 2 to 3, do you

- 1 mention anything with respect to what's happened  
2 in Kentucky, just in that answer.
- 3 A I think the question was directed to ISPs  
4 experience in Utah and how it was similar to ISPs  
5 experience in Kentucky. And the answer regards  
6 the joint marketing that was certainly a problem  
7 for Internet Service Providers in Utah and joint  
8 marketing was also in IgLou's complaint. And--
- 9 Q So, in that answer--
- 10 A --on line--
- 11 Q --you don't mention anything about Kentucky?
- 12 A On line 47 I mention that it was quiet similar in  
13 respects to IgLou's complaint. IgLou is a  
14 Kentucky provider.
- 15 Q That's the only line you mentioned in there about  
16 anything related to Kentucky, in that answer, is  
17 that right? That--
- 18 A That line is specific to your question. Yes.
- 19 Q Yes. You make that allegation that it's similar,  
20 but you don't have any other facts or anything in  
21 that answer.
- 22 A Any other facts--
- 23 Q About Kentucky, in that--
- 24 A --specifically about--

- 1 Q There are no facts in that answer about Kentucky?
- 2 A Not in that particular answer. No.
- 3 Q Okay. The next question, you're asked to address
- 4 the similarities between Utah's ISPs experience,
- 5 Internet Service Provider's experience and IgLou's
- 6 allegations regarding BellSouth joint marketing
- 7 activities. That answer also does not address
- 8 anything specific with respect to Kentucky other
- 9 than the statement that IgLou's observations
- 10 remind you of Utah.
- 11 A Yes.
- 12 Q There are no specific facts about Kentucky in that
- 13 answer either?
- 14 A IgLou's complaint is very similar to Utah's
- 15 complaint.
- 16 Q Okay. And that's the only thing in there is that
- 17 the complaint is similar, you give nothing to
- 18 support that in that answer?
- 19 A The complaint is similar and the MTIA's objection
- 20 to joint marketing is relevant, both in Utah and
- 21 in Kentucky.
- 22 Q And there's no--but there's no specific facts in
- 23 that answer to support that related to Kentucky?
- 24 A Again, I don't know what you're driving at but I

1 suppose not.

2 Q Okay. Thank you. In page 4, question at line 77,  
3 you get to some specific allegations about  
4 BellSouth and as they relate to repair calls. You  
5 say it's your understanding that those repair  
6 calls have been used as an opportunity to market  
7 by BellSouth, is that based on the allegations of  
8 IgLou and other ISPs?

9 A That was based on testimony in this proceeding  
10 from Mr. Curtis and Mr. Danak.

11 Q Is it based on any specific facts you actually  
12 know about Kentucky or BellSouth?

13 A Facts that I actually know. The facts that I  
14 actually know are the facts that were presented by  
15 the witnesses in their testimony.

16 Q Those are all your comments on what other people  
17 have said, is that correct?

18 A I have absolutely no way of having been on the  
19 phone conversation with the IgLou representatives  
20 and the BellSouth repair representatives. So, I  
21 cannot testify to the accuracy of that.

22 Q Okay. And you didn't make any test calls  
23 yourself, did you?

24 A No. I did not make any test calls myself.

1 Q Okay. On page 5, question at line 93. Again,  
2 you're asked questions comparing Kentucky and Utah  
3 and you discuss Texas, California, U.S. West  
4 territory, New York ISPs and Bell Atlantic tariff  
5 from lines 96 to line 102.

6 A Yes.

7 Q There is not a single fact related to BellSouth in  
8 that answer either, is there?

9 A Well, because the question was talking about ISPs  
10 besides those in BellSouth territory.

11 Q Okay. But, again, this is another answer that has  
12 nothing specific related to Kentucky?

13 A Because the question didn't ask about Kentucky.

14 Q Okay. Again, line 104 on page 5, you address  
15 BellAtlantic territory,--

16 A Yes.

17 Q --is that correct in that answer?

18 A Yes.

19 Q Nothing related to Kentucky?

20 A This was a follow-up question to the previous  
21 question, which was, are Internet Service  
22 Providers, besides those in Kentucky and Utah,  
23 having problems? So, the question itself was not  
24 specifically related to Kentucky. It was to draw

1 a picture for the Commission of the problems that  
2 Internet Service Providers across the country are  
3 experiencing to let them know that the problems  
4 that the Internet Service Providers in Kentucky  
5 are experiencing are not exclusive to this state.

6 Q You wrote the questions and you wrote the answers  
7 and so far, we've not dealt with anything about  
8 Kentucky other than that one question, is that  
9 right?

10 A No. That's not right. I think we looked back  
11 on--I think I answered you on a previous question  
12 that I did talk about Kentucky and I talked about  
13 the similarity in IgLou's complaint to the Utah  
14 complaint.

15 Q But no specific facts in that question?

16 A No.

17 Q Okay. On line 115 at page 5 you talk about  
18 aggregators and you mention that independent ISPs  
19 in a single state cannot aggregate at the level of  
20 the FCC tariff requirements by Bell Atlantic, is  
21 that correct?

22 A In that particular example I mentioned Bell  
23 Atlantic, it would be the same for BellSouth.

24 Q Are you familiar with the aggregation agreement

1           between BellSouth and the Florida ISP Association?

2    A       Yes, I am.

3    Q       Do you maintain that that requires the aggregation  
4           be within a single state?

5    A       The Florida Internet Service Provider Association  
6           has not provided me a copy of the agreement  
7           between them and BellSouth. So, I cannot say  
8           specifically whether that is limited to a single  
9           state. However, I believe that the Florida  
10          Internet Service Provider Association, based on  
11          what Joe Marion, their Executive Director, told me  
12          I believe that they are planning to change the  
13          name of their association and offer aggregation  
14          services outside of Florida. So, that would lead  
15          me to believe that the contract between Florida's  
16          Internet Service Provider Association and  
17          BellSouth is not exclusive to that state.

18   Q       But you have not any testimony in here about the  
19           fact that there are aggregator arrangements that  
20           are regionwide in BellSouth's territory?

21                   MR. AMLUNG:

22                            Could you explain by what you mean "in  
23                            here," is it in this particular  
24                            question.

1 Q In your testimony.

2 A In my testimony I don't believe that I referred to  
3 the Florida aggregator system directly.

4 Q Okay. You didn't include that for some particular  
5 reason?

6 A I would be happy--I'm more than happy to talk  
7 about it. But I didn't--I did not include it.

8 Q Are you familiar with whether it's regionwide or  
9 statewide. I've got a mixed answer from you. I'm  
10 just not sure if you're saying it is regionwide--

11 A Well, what I--

12 Q --it's statewide--

13 A --said was that I have not--that I talked--one  
14 reason, I believe, that I didn't put it in my  
15 testimony was because I didn't feel comfortable  
16 not having seen the contract and I did contact Joe  
17 Marion and asked for a copy of that contract and  
18 he said he would have to ask BellSouth if it was  
19 all right to supply it to me. So, I have not seen  
20 a copy of that contract and that's why I didn't  
21 refer to it in my testimony. So, I--but I would  
22 say through my conversations with Joe I am  
23 somewhat familiar with it. I didn't feel like  
24 testifying about something that I wasn't

1 particular familiar with.

2 Q Well, you've testified that ISPs cannot reach this  
3 level within a single state. Do you know if they  
4 can reach the required levels of the tariff  
5 regionwide?

6 A I think it is very doubtful. I think that it's  
7 anticompetitive.

8 Q Well, I didn't ask you that question. I asked you  
9 the question of, can they reach those levels  
10 regionwide under an aggregator arrangement?

11 A I think that if they went under an aggregator  
12 arrangement and were committed to the 40,000 line  
13 commitment that is in the Florida agreement, they  
14 would certainly have very little incentive to sell  
15 any other data LECs, Data Local Exchange Carriers,  
16 product than BellSouth's.

17 Q I don't think I asked you that question either. I  
18 asked you the question of, do you have any  
19 information or testimony on whether or not the  
20 Florida ISP Association regionwide can reach the  
21 volume commitments in the FCC tariff, do you have  
22 an opinion on that subject?

23 A Yes. I do have an opinion.

24

1 MS. CHAMBERS:

2 Okay.

3 A And I don't believe that they can.

4 Q Do you know what the length of time is that they  
5 have to reach that?

6 A I have heard that the length of time is three  
7 years.

8 Q Okay. What do you base your opinion that they  
9 can't reach that level on?

10 A Three years in a nine state territory. I base  
11 that on the opinion that after two years in the  
12 Utah territory the independent Internet Service  
13 Providers were able to sell less than 2,000 lines,  
14 in fact, the number was closer to 1,000 lines,  
15 after two years, that was in one state. If we put  
16 all the fourteen states together, and granted Utah  
17 is one of the smaller states, I don't think that  
18 40,000 lines would be possible. Also, I think  
19 that it is impossible to make a commitment for a  
20 40,000 line level when you do not know, with any  
21 reliable certainty, where and when the network is  
22 being augmented to roll out DSL, and you learn  
23 about it in the newspaper the same time U.S. West  
24 tells retail customers about it in the newspaper.

1 So, making a volume commitment is, I think, an  
2 unacceptable risk, even spread over a multi-state  
3 territory, whether it's in U.S. West territory or  
4 BellSouth territory.

5 Q You've made that comparison between U.S. West  
6 territory and BellSouth territory, but do you have  
7 any facts related to Kentucky or any BellSouth  
8 states to base that on other than your assumption  
9 that they're the same as U.S. West?

10 A No. But I would say that it's a reasonable  
11 assumption.

12 Q But, it's merely an assumption?

13 A Yes, it is an assumption.

14 Q Okay. Can I ask you to turn to page 6, the  
15 question at line 119 and 120.

16 A Yes.

17 Q Again--and I don't mean to repetitious, but again,  
18 this question about BellSouth's suggestion and ISP  
19 aggregators, again, is an assumption based on a  
20 comparison to U.S. West territory, it is not based  
21 on any facts in Kentucky or in BellSouth's  
22 territory?

23 A I think what I said in my answer on line 122 was  
24 that aggregation was not--is not always a viable

1 option for ISPs, especially in BellSouth's  
2 territory.

3 Q But, again, that's based on your assumption and  
4 your comparison to U.S. West, is it not?

5 A Well, what I've seen in BellSouth's territory is  
6 that BellSouth keeps a very close watch on the  
7 information about deployment, in fact, a couple  
8 days ago I was talking to an Internet Service  
9 Provider in Georgia who said that she has been  
10 trying very hard to get information from BellSouth  
11 about when DSL is going to be rolled out in  
12 Georgia and cannot get that information. If you  
13 cannot get that information you can't buy the  
14 equipment, you can't market the product. I would  
15 say that makes aggregation a very unacceptable  
16 risk in the BellSouth territory.

17 Q That's one comment from someone in Georgia?

18 A I'm just saying that it's not--it's in other--in  
19 another--yes, it is one comment from someone else  
20 in BellSouth territory, but it's not exclusive to  
21 Kentucky.

22 Q Okay. On page 7, question at line 149 to 150,  
23 you've recited certain prices there at lines 158  
24 to 161 for BellSouth's retail package.

1 A Yes.

2 Q Are you aware that you have those numbers wrong?

3 A When I read the responses to my testimony I--I  
4 don't remember which BellSouth witness it was, but  
5 one of the witnesses pointed out that BellSouth  
6 does charge for the modem. I asked IgLou about  
7 this and IgLou told me that sometimes they charge  
8 and sometimes they don't. And it is correct that  
9 the information that I have here on the price was  
10 supplied to me by IgLou and I'm going on the  
11 representations to me.

12 Q So, you made no independent verification of  
13 that--

14 A No.

15 Q --prior to swearing to your testimony?

16 A No.

17 Q You didn't even make a correction here this  
18 morning when you gave your testimony into the  
19 record, did you?

20 A You know, I'll be very honest with the Commission,  
21 this is the first time that I have appeared as an  
22 expert witness. I am not aware that that was  
23 something that I should have done, if I was  
24 supposed to make a correction. I apologize for

1 not making the correction. I believe that the  
2 pricing is still unclear, if sometimes the modem  
3 is handed out for free and sometimes it isn't. It  
4 may not, as of today, as of this moment, be given  
5 to customers for free, but if it is at some times  
6 and isn't at others, I don't know exactly how I'm  
7 supposed to correct that.

8 Q Well, Ms. Ashdown, you didn't actually verify any  
9 of this though, yourself, did you?

10 MR. AMLUNG:

11 Could you clarify any of what?

12 Q Any of the prices or the information that IgLou  
13 gave you?

14 A No, I did not.

15 Q And you didn't know that you should do that before  
16 you swore to it?

17 A No. I was not advised to do that.

18 Q You were asked the question by your attorney,  
19 though, of whether you had any additions or  
20 corrections or modifications to your testimony,  
21 were you not?

22 A Yes, I was asked that question.

23 MS. CHAMBERS:

24 Okay.

- 1 A But, again, I think that the pricing is  
2 sufficiently ambiguous that even if I had been  
3 advised to make that correction, I'm not exactly  
4 sure how I would have made that correction.
- 5 Q Well, I'm--
- 6 A When the pricing changes from day to day on the  
7 products on BellSouth, I don't understand how I'm  
8 supposed to be the one to correct that for the  
9 Commission. I believe that it's BellSouth's  
10 responsibility to provide accurate information on  
11 the pricing.
- 12 Q I'm sorry, Ms. Ashdown, you have told us that you  
13 haven't checked any of those prices. So, you  
14 don't know whether they change from day to day or  
15 not yourself, even though you have--
- 16 A I am, again--
- 17 Q --sworn to this--let me finish the question. Even  
18 though you have sworn to this testimony.
- 19 A Again, I'm going on the representations that IgLou  
20 gave to me.
- 21 MS. CHAMBERS:
- 22 Okay.
- 23 A I have no reason to doubt those representations.
- 24 Q You're simply accepting them at face value?

1 A I am accepting them at face value.

2 MS. CHAMBERS:

3 Okay.

4 A I trust what they are telling me, because they're  
5 Internet Service Providers just like I am.

6 Q Okay. Fair enough. On page 9 of your testimony,  
7 question at line 190. Again, this answer  
8 addresses what's happening in Utah and U.S. West  
9 territory. Aside from your conclusory statement  
10 that this is the type of skewed market picture  
11 that the Kentucky Commission should carefully  
12 guard against, are there any facts in this answer  
13 that relate specifically to Kentucky or BellSouth?

14 A I'm not aware that BellSouth, in its testimony,  
15 submitted any information as to the number of  
16 ports deployed in Kentucky. So, it would be very  
17 difficult for me to specifically refer to  
18 Kentucky's market picture, since BellSouth knows  
19 that market picture better than anyone and has not  
20 revealed specific numbers.

21 Q So, your answer is no, this doesn't include  
22 anything related to Kentucky?

23 A No. This doesn't include anything related in  
24 Kentucky but that is because BellSouth holds that

1 information, not me.

2 Q That's fine. Let's move on to page 10, question  
3 at 208. The answer there concerns Utah, U.S. West  
4 and a conclusion about Kentucky, does it not, the  
5 same as your other answers that we've talked  
6 about, is that correct? You're, again, drawing a  
7 conclusion based on facts from states out of  
8 BellSouth's territory.

9 A Data LECs have a similar deployment pattern across  
10 territories.

11 Q Is that a yes to my question? You're drawing a  
12 conclusion from states outside BellSouth's  
13 territory?

14 A I would say that since data LECs deployment  
15 patterns are similar across territories, that  
16 that's a reasonable conclusion. And, yes, that is  
17 the conclusion that I have drawn.

18 Q Thank you. You are candid enough on page 11 of  
19 your testimony to admit you do not have actual  
20 knowledge of any alleged sharing of information.

21 A That's correct.

22 Q Okay. But you do talk about, in that answer on  
23 line, starting at 250, again, about Salt Lake City  
24 and U.S. West and your company and U.S. West.

1 A I wanted to give the Commission an example of what  
2 happens when the incumbent telephone monopoly  
3 engages in anticompetitive provisioning and let  
4 them know that that possibility existed here.

5 Q You give the example of when DSLAMs.

6 MS. CHAMBERS:

7 I'm sorry, I can't tell the court  
8 reporter what that stands for.

9 A Digital Subscriber Line Access Multiplexer.

10 Q Thank you. When those are rolled out and U.S.  
11 West did not have sufficient ports, they were  
12 already full.

13 A Yes.

14 Q You don't have any facts that anything like that  
15 has happened in Kentucky or with BellSouth, do  
16 you?

17 A I am not aware that BellSouth reveals or is  
18 actually even required to reveal port availability  
19 on its DSLAMs. So, there--that would be  
20 impossible for me to know. And not having sold  
21 Internet service myself in Kentucky, I have no  
22 experience with having my customers in Kentucky  
23 going on a waiting list. But, again, the  
24 possibility exists here and if there is no

1 reporting requirement for that, one would be  
2 taking BellSouth's word for it, if BellSouth said  
3 that that had never happened or would never happen  
4 here.

5 Q Okay. Let me just try it once more. The question  
6 is, do you have any information that that's ever  
7 actually happened in Kentucky--

8 A No. I--

9 Q --with BellSouth?

10 A No. I don't have any information--

11 MS. CHAMBERS:

12 Okay.

13 A --for the reasons that I just gave you.

14 Q Okay. The next question you're asked to comment  
15 on IgLou's contentions that BellSouth's been  
16 discriminatory in sharing deployment information.  
17 Again, you're drawing a conclusion that assumes  
18 that if IgLou's allegations are true, it's just  
19 like Utah, is that right?

20 MR. AMLUNG:

21 Could you explain like what you mean by,  
22 "it's just like Utah?" Are you  
23 referring to the facts up there or cases  
24 that have occurred--

1 Q I'm referring to her answer at questions 266 to  
2 268 where she says that if IgLou's allegations are  
3 true BellSouth has not met its obligation, the  
4 effects are similar to those experienced in the  
5 Utah market. Similar is just like.

6 A In my answer I was trying to point out for the  
7 Commission that if BellSouth, like U.S. West, had  
8 kept information on deployment to itself, had  
9 provisioned its own affiliate in a way that was  
10 discriminatory in relationship to IgLou or other  
11 Kentucky ISPs, the effects would be similar to  
12 those experienced in the Utah market where what we  
13 saw was a vast majority of DSL customers going to  
14 the incumbent local exchange carrier and a very  
15 small portion of the customers going to the  
16 Internet Service Providers who had been in the  
17 market for years.

18 Q So, again, you're drawing a conclusion based on  
19 IgLou's allegations and your experience in Utah?

20 A Yes, and I believe it's a reasonable conclusion.

21 Q Okay. The question at line 262 and the previous  
22 ones are asking you to comment on allegations.  
23 Suddenly at the question at line 270 you no longer  
24 include the word allegation or contention, but you

1 state as a fact and ask what are the consequences  
2 of BellSouth's failure to adequately post this  
3 information. How did IgLou's allegations in the  
4 previous questions suddenly go to statements of  
5 fact in this question?

6 A Perhaps I didn't write the question carefully  
7 enough.

8 Q Perhaps.

9 A Again, though, if BellSouth was discriminatory in  
10 the deployment information, then it did fail to  
11 adequately post that information. And according  
12 to the testimony submitted by IgLou's witnesses,  
13 they did fail to post that information. And I've  
14 been unable to find any evidence that that  
15 information was posted.

16 Q But, your question and answer states that as a  
17 fact, not an allegation in that question and  
18 answer, does it not?

19 A Again, I'm not an attorney, perhaps I should have  
20 written the question more carefully.

21 Q Okay. Turn to the question at 286--at line 286 on  
22 page 13. You had another question where, again,  
23 the allegations that previously had been stated in  
24 the questions as allegations, suddenly became

1 statements of fact. What is the impact of  
2 BellSouth's deployment secrecy for Kentucky  
3 citizens?

4 A Again--

5 Q Earlier--let me finish the question. I'm sorry.  
6 You earlier testified that you had no firsthand  
7 knowledge of anything that was happening in  
8 Kentucky, you're basing this all on allegations of  
9 IgLou--

10 A I have--

11 Q --but you've stated this as a fact.

12 A I asked IgLou to check very carefully for postings  
13 of network disclosures and they told me they were  
14 unable to find them. So, I would look at that as  
15 deployment secrecy.

16 Q But, you've accepted, unchecked, their allegations  
17 and you've stated them as facts in your question,  
18 have you not?

19 A That's true. I did not check them personally.  
20 But I did ask them to check.

21 Q Okay. Was this question written poorly also or  
22 was that deliberate?

23 A I would not characterize anything that I did--

24

1 MR. AMLUNG:

2 I'm going to object to that question.

3 A --here as poorly. I would say that I was doing my  
4 best to provide questions and answers as IgLou's  
5 expert witness on matters that I know something  
6 about.

7 Q Well, you've conceded that the last question was  
8 written less than carefully.

9 A What I meant, when I said that it was written less  
10 than carefully was that, if I were an attorney and  
11 I had gone to law school, perhaps I would be  
12 better at writing questions for myself.

13 Q Well, you know, the difference between allegation  
14 and fact, don't you?

15 A Of course I know the difference between allegation  
16 and fact.

17 Q Do you know or have you been advised that you  
18 should not answer a question with an unstated  
19 allegation in it, which is stated as a fact?

20 A No. I was not advised--

21 MR. AMLUNG:

22 Commissioner's, I'm going to object to  
23 this whole line of questioning. I don't  
24 see the relevancy of this. Ms. Ashdown

1 has clearly stated that she may have  
2 been mistaken in her wording, we're just  
3 getting into a battle of semantics here.

4 CHAIRMAN HELTON:

5 I would remind the parties that this is  
6 an administrative hearing, we do not go  
7 by strict rules of evidence as most  
8 courts do. In an administrative hearing  
9 we're trying to elicit facts, but we  
10 also allow some latitude. So, I would  
11 remind the parties of that.

12 MS. CHAMBERS:

13 Thank you, Commissioner.

14 Q Let's look at what facts you do have. Have you  
15 personally looked at BellSouth's notices on ADSL?

16 A Which notices are you referring to?

17 Q Any of BellSouth's notices with respect to ADSL  
18 deployment?

19 A If there are no notices posted--if there are no  
20 notices posted, it would be hard for me to look at  
21 them.

22 Q We could move this along faster, if you just told  
23 me, have you looked at them or haven't you? If  
24 the answer is no, you haven't, that would be fine.

1 A No. I haven't, because I'm not aware of where  
2 they're posted.

3 Q Okay. Have you looked at BellSouth's web site?  
4 A Yes. I have looked at BellSouth's web site.

5 Q Okay. Are you familiar with what was on  
6 BellSouth's web site at the time ADSL was rolled  
7 out in Kentucky?

8 A As I understand it, ADSL was rolled out in  
9 Kentucky in 1998. And I was fairly busy at that  
10 time with the roll out of ADSL in Utah in 1998.  
11 So, no, I was not looking at BellSouth's web site  
12 at that time.

13 Q Have you seen copies of anything that was printed  
14 from BellSouth's web site contemporaneously with  
15 the ADSL roll out?

16 A Yes, I believe Mr. Gregoire showed me copies.

17 Q Have you filed those in your testimony?  
18 A No. I did not file those in my testimony.

19 Q Are they in the record?  
20 A I am not sure if they're in the record or not.

21 Q I believe I had earlier asked you everything  
22 you've looked at relative to your testimony. Is  
23 there other material you've looked at that's not  
24 in the record that you're basing your testimony

1 on?

2 A Not that I can recall.

3 Q So, does that mean you don't think there's  
4 anything that you've looked at that's not in the  
5 record?

6 A I don't believe so.

7 Q Okay. Have you looked at BellSouth's newspaper  
8 publications about ADSL wholesale tariff offerings  
9 in Kentucky?

10 A Are those the classified ads that BellSouth  
11 referred to in its testimony?

12 Q Well, there are advertisements in USA today, have  
13 you looked at those?

14 A Which advertisements are you referring to?

15 Q The ones that published ADSL wholesale tariff  
16 offerings by BellSouth.

17 A Are you talking about newspaper advertising? Are  
18 you talking about retail advertising or are you  
19 talking about deployment notices in the newspaper?

20 Q I'm talking about deployment notices of ADSL under  
21 the wholesale FCC tariff.

22 A Which, according to BellSouth's testimony, I seem  
23 to recall were listed in the paper some time in  
24 1998, is that correct?

1 MS. CHAMBERS:

2 Yes.

3 A Yes. I have not seen those.

4 Q You've not seen those. What about the  
5 publications in the Louisville Courier Journal on  
6 the ADSL wholesale tariff offering--

7 A From the same period?

8 Q From when the ADSL wholesale tariff was rolled  
9 out?

10 A I'm unaware that the FCC considers the newspaper  
11 an appropriate place to put these notices. But,  
12 nevertheless, I did not--I've not seen them.

13 Q You have not?

14 A No.

15 Q Okay. What about the publications of the  
16 wholesale ADSL tariff offerings in Kentucky that  
17 were published in the Frankfort State Journal?

18 A No.

19 Q Have you looked at BellSouth's CEI plans?

20 A Can't find them.

21 Q Okay. So, you haven't looked at them.

22 A If I can't find them, I can't look at them.

23 Q Okay. Have you reviewed BellSouth's tariff and  
24 network disclosures?

1 A No. I have not.

2 Q Before you filed your testimony, you did not  
3 double check the prices for fast access?

4 A No. I did not.

5 Q Before you filed your testimony, you did not check  
6 to see if BellSouth had ever had DSLAM ports in  
7 Kentucky reach 100 percent utilization before  
8 additional DSLAMs were deployed?

9 A Again, there's no reporting requirement on that.  
10 I'm not sure exactly where I would look to find  
11 that information.

12 Q Okay. Before you filed your direct testimony, you  
13 did not look at the FISPA, the Florida ISP  
14 contract either?

15 A I asked for a copy of the FISPA contract and it  
16 was not provided to me.

17 Q So, you didn't see that. Okay. You also take  
18 issue, I think, with one of BellSouth's witnesses  
19 on comparing Internet customers to National ISPs.  
20 I believe you say the comparison should be to  
21 regional providers. And, you do not consider  
22 yourself an expert on the southeast region or you  
23 do?

24 A On the southeast region particularly?

1 Q In Internet?

2 A In Internet service?

3 MS. CHAMBERS:

4 Right.

5 A No. I'm not a particular expert on Internet  
6 service in the southeast region. But, I think  
7 that it's fair to say that when you compare  
8 national numbers with regional numbers regardless  
9 of the region, it's not a fair comparison.

10 Q In your rebuttal testimony, and this is at line 48  
11 to 55.

12 A Yes.

13 Q You give the comparison of apples and oranges. It  
14 just struck me as interesting that that's exactly  
15 the same analogy that Mr. Gregoire used in his  
16 rebuttal on pages 14, lines--

17 A You know, when I read Mr. Gregoire's rebuttal, I  
18 was surprised by that, that he had used the same  
19 reference too.

20 Q Well, so was I. Did he copy your analogy or did  
21 you copy it from him?

22 A Well, I would supposed you'd have to ask him--

23 MR. AMLUNG:

24 I believe that's a conclusion.

1 A --if he copied my analogy, because I wrote this  
2 analogy.

3 Q Okay. Do you know anything about the method by  
4 which the accounting for time is handled for  
5 BellSouth employees and how that's verified?

6 A I only know it as it was described to me by Mr.  
7 Gregoire.

8 Q Okay. How was it described to you?

9 A It was described to me as, I believe, a percentage  
10 of the time--a formula for the percentage of the  
11 time that employees spent on Internet--there was a  
12 set formula, a set percentage and that was how the  
13 costs were allocated.

14 Q Are you aware that the FCC has approved the  
15 statistical validity of that method?

16 A It may have.

17 Q Do you know one way or the other?

18 A I do not know one way or the other.

19 Q Do you know anything about price regulation?

20 A I am not a price regulation expert.

21 Q Are you able to explain how a company cross-  
22 subsidizes under price regulation?

23 A Generally, if a company is using profits from  
24 its--the unregulated side of the house to

1 subsidize a money loosing side of the--if they are  
2 taking profits from the regulated side of the  
3 house and using them to subsidize the money  
4 loosing unregulated side of the house, that's  
5 cross-subsidization.

6 Q And, how does the company do that under price  
7 regulation?

8 A The company does it, I would suppose, if the cost  
9 allocations are not examined closely and  
10 frequently enough.

11 MS. CHAMBERS:

12 Just a minute.

13 Q Ms. Ashdown, do you mind turning back to your  
14 direct testimony on page 13.

15 A Okay.

16 Q Line 289 to 90. Are you aware that BellSouth has  
17 loop qualification data base?

18 A I'm sure that it does. Most ILECs do.

19 Q Are you aware it is capable of handling 16,000  
20 queries per minute?

21 A No. I'm not.

22 Q I'm sorry?

23 A No.

24 Q Are you aware it is updated constantly as

1 deployment progresses?

2 A That would be a good idea.

3 Q Do you know that that's what's done?

4 A I don't know, but that would be a good idea.

5 Q You've talked a little bit about the pricing on  
6 Internet service. On high speed Internet  
7 connection is price driving that down based on the  
8 competition?

9 A Do you mean to say, is competition driving the  
10 price down?

11 Q Yes. I'm sorry. I think I reversed those. Is  
12 competition driving the price down?

13 A There seems to be a very clear connection between  
14 the pricing of DSL across the country and the  
15 pricing of cable Internet access.

16 Q Okay. Are there ISPs out there who believe that a  
17 free Internet model can work?

18 A Perhaps the free Internet ISPs believe that it can  
19 work. I don't think that most of the 7,000 small  
20 to medium Internet service providers believe that  
21 it can work. And, in deed, most of them do not  
22 make their money by offering free Internet  
23 service.

24 Q But, there's a difference of opinion on that

1 subject, isn't there, in the industry?

2 A It depends on how you're classifying the industry.  
3 I think that the 7,000 small to medium ISPs, it  
4 would be hard to find an ISP in that category that  
5 would believe that that's a viable model.

6 Q Well, there are even providers who are offering  
7 free DSL service, aren't there?

8 A Yeah. I'm not too familiar with those.

9 Q Okay. Do you know how they do that? How they  
10 make that model work?

11 A I would imagine that they make it work through  
12 advertising revenue.

13 MS. CHAMBERS:

14 Okay.

15 A And, I--you know, I have my doubts about the long  
16 term sustainability of that.

17 Q In your testimony you have said that you believe  
18 that federal and state commissions lack the  
19 resources to insure that the incumbent local  
20 exchange companies comply with the rules?

21 A That's been my observation based both on my  
22 experience at the Utah Public Service Commission  
23 and at the FCC.

24 Q Do you have any facts to support your contention

1           that the FCC lacks the resources to insure that  
2           the incumbent local exchange companies act in  
3           compliance with accounting rules?

4       A     The FCC is--the FCC and its employees have told me  
5           that they're very, very busy with the 271  
6           applications of the various Bell companies.  And  
7           the more those 271 applications are approved, the  
8           more problems, like, Internet--like those  
9           experience by the Internet service providers and  
10          are questions about cost allocation and  
11          provisioning reports.  The more those--the more  
12          the Commission is occupied with things like that,  
13          the more our issues go toward the back burner.

14       Q     They've told you that?

15       A     FCC employees have told me that, yes.

16       Q     Can you give me any specific names?

17       A     Specifically Stacey Pies, who used to be with  
18          Common Carrier Bureau, told me that--

19       Q     Has she told you the FCC cannot enforce their  
20          accounting rules?

21       A     She--I--no.  I don't think that--and I don't think  
22          that that was the purpose of Stacey's comment to  
23          me.  The purpose of Stacey's comment to me was to  
24          let me know the difficulty that Internet service

1 providers would have in getting the FCC to enforce  
2 regulations. They're a very--and Stacey is not  
3 the only FCC employee that's told me that, that  
4 they're very under staffed, under funded and  
5 it's--for the ISPs enforcement of existing  
6 regulations is a burning issue, but there are many  
7 burning issues that the FCC must contend with.

8 Q Are you aware that the FCC has a new enforcement  
9 bureau?

10 A Of course I'm aware that they have a new  
11 enforcement bureau.

12 Q And, it's not related to 271?

13 A Yes, I'm aware of that.

14 Q Okay. What facts do you have to support your  
15 claim that this State Commission lacks the  
16 resources or has in any way failed to do its job  
17 to insure incumbent local exchange companies  
18 comply with the rules?

19 A None whatsoever. I was extrapolating from what  
20 I've seen on the--what my experience was in Utah  
21 and what other Internet service providers have  
22 told me about their Commissions. It may, in fact,  
23 be true that this Commission is fully staffed and  
24 fully resourced and fully vigilant. I will note

1 that in Kentucky, unlike in Utah, there does not  
2 seem to be an office of Consumer Services that is  
3 there to advocate solely for the consumer or the  
4 small business interest as it is in Utah. So,  
5 that places an additional burden on the Commission  
6 here that the Commission in Utah, for instance,  
7 doesn't have to contend with.

8 MS. CHAMBERS:

9 No further questions.

10 CHAIRMAN HELTON:

11 Thank you.

12 MS. DOUGHERTY:

13 Actually, I have some--ma'am, I have  
14 some questions for you.

15 A Oh, I'm sorry.

17 CROSS EXAMINATION

18 BY MS. DOUGHERTY:

19 Q My name is Amy DOUGHERTY, I'm counsel to the  
20 Commission and staff here. I have a few questions  
21 for you. It won't be long though. Could you  
22 please turn to page 8 of your testimony, your  
23 original testimony? I'm looking at lines 167 to  
24 171.

1 A Yes.

2 Q There you describe a pricing scheme. Can you tell  
3 the Commission what you see as the problem there,  
4 the wholesale price of \$45 and their retail price  
5 of the ILEC of 39.95?

6 A Well, an Internet service provider that decided  
7 that they were--if they decided they were going to  
8 go ahead and purchase the DSL from BellSouth at  
9 \$45 per loop and decided that they were going to  
10 try to compete, not on the basis of price, but,  
11 let's say, service quality, it's still going to  
12 have a very difficult time making the case to a  
13 consumer that when you add the \$20 typical  
14 Internet service connection fee and that their  
15 Internet service is going to cost them \$65 where  
16 they can get the same thing from BellSouth for  
17 39.95, you can imagine that the Internet service  
18 provider is not going to be able to collect many  
19 customers that way. And, interestingly enough,  
20 it's--this is a very similar situation to what the  
21 California Internet service providers are  
22 experiencing. And, they came--a group of them  
23 came to Washington about a month ago and one them,  
24 I recall, had a manilla folder full of e-mails

1 from his clients. He had decided against all odds  
2 to go ahead and offer the product and buy it from  
3 SBC at \$45 a wholesale loop and he contacted all  
4 of his customers who had sent him requests earlier  
5 asking about DSL availability and he said, okay,  
6 we have it now, are you interested? And, he came  
7 with a stack of e-mails from his customers saying,  
8 no, sorry, already gone with SBC or PACBell or  
9 PACBell/SBC, no need, and why would I go with you  
10 anyway, when you're so much more expensive.

11 Q Is it your understanding that this pricing  
12 difference between the wholesale rate that the--I  
13 assume you're alleging that BellSouth.net provides  
14 this at \$40, is that correct?

15 A That's what I was told by IgLou. Yes.

16 Q Is it your understanding then that that pricing  
17 difference is caused by the tariff discount  
18 available on a regional volume basis?

19 A Yes, because I think that's the way that IgLou  
20 said the tariff had been set up.

21 Q Based on your experience with ISP services across  
22 the country, with your association and your  
23 personal experience in Utah, what is it  
24 specifically that you would ask this Commission to

1 do today on behalf of IgLou?

2 A Well, the most important thing, I think, in  
3 IgLou's Complaint is their reference to the  
4 Kentucky Statute that says that discrimination  
5 should not be allowed here in Kentucky. And,  
6 again, I'm not a lawyer, I'm not a legal expert, I  
7 can't tell you exactly how I think the remedy  
8 should be applied. The purpose in my testimony  
9 here was to provide a warning system for the  
10 Commission here to help them understand that if  
11 something is not done about this, where Kentucky  
12 has the opportunity to do something about it, the  
13 market conditions could look very similar to the  
14 way that they are starting to look in other parts  
15 of the country and consumers eventually will have  
16 less choice in Internet service provider and I  
17 don't think that that is in the consumer's best  
18 interest. A variety of choice is what consumers  
19 have repeatedly demonstrated that they wanted, not  
20 just a choice between giants.

21 Q Based on your testimony and your experience, is--  
22 am I accurate in my understanding that you believe  
23 that under this discrimination issue, as you  
24 allege, would come these pricing issues that we've

1 just been talking about, based on the volume  
2 available on a regional basis to the discount--  
3 A Yes. I think that the pricing is certainly very  
4 suspicious. I also understand that cross-  
5 subsidization is extremely difficult to prove,  
6 difficult and time consuming to prove. So, I  
7 would be very interested in all sorts of  
8 discrimination, not just the price discrimination,  
9 and the information discrimination is a big part  
10 of this. Because, as I said, even if you decided  
11 against all odds that you were going to go ahead  
12 and try and offer DSL service and charge more for  
13 it and compete on the basis of quality, if not  
14 price, if you don't know where and when things are  
15 coming out, when the network is being augmented,  
16 it's impossible for you to compete in the market.  
17 And, if you don't have access to that loop  
18 qualification data base on the same terms as the  
19 affiliate, then you're being discriminated against  
20 and it will not be possible for you to compete  
21 fairly.

22 Q Are you aware of any place in the country that you  
23 believe the DSL issues and these issues that are  
24 the subject of this complaint are being done

1           correctly?

2    A    No.  I think that in the U.S. West territory and

3           --I know that here in Kentucky, for instance, the

4           Internet service providers have told me that they

5           are able, at least, to make a limited go of it in

6           GTE territory, that GTE does not have these absurd

7           tariffs where they have to commit to a 40,000 line

8           volume to--in order to obtain a reasonable

9           discount.  However, the fact of the matter is,

10          that even if they're able to make a go of it in

11          GTE territory, it's very similar to the way the

12          Internet service providers are able to make a go

13          of it in U.S. West territory, and that is by

14          accepting the crumbs from the ILEC's table.

15          Basically, what--again, they are not forthcoming

16          with the information on the deployment.  So, we

17          are precluded from effectively marketing and

18          rolling out the service.  And, if Kentucky and

19          other states want to see broadband service rolled

20          out, the best way to do that, and the FCC has

21          recognized this as well and referred to it in the

22          706 NOI, that the best way to do that is by fully

23          involving the Internet service providers instead

24          of making it very difficult and marginalizing them

1           and making it impossible for them to compete.

2    Q       You made some reference to the independent ISPs

3           being kind of a small and diminishing lot.  What

4           is it that's driving them out of business, in your

5           opinion?

6    A       Well, I wouldn't say that they're small and

7           diminishing yet, but, if this continues, it's

8           clear that they will be, because broadband is the

9           way of the future and more and more people are

10          going to want broadband.  And, as IgLou has

11          experienced here, when they are unable to sell

12          broadband their sales continue to go somewhat

13          slowly on the narrow band side of the house.  But,

14          the broadband is really where the future is and

15          they need to be able to participate in that market

16          and you cannot, in a capitalist system, sit still,

17          you either grow or you fail.  And, so I don't

18          think that you're seeing Internet service

19          providers go out of business yet and the--and if

20          they are able to catch someone's attention, either

21          at local Commissions like this one or at the FCC

22          or both, in terms of enforcing existing rules,

23          there may still be time, but if not, it's only a

24          matter of time.

1 Q What specifically would you think would be the  
2 solution to this discrimination problem?

3 A Again, enforcement of the existing regulations.  
4 And, quite frankly, a review of the--in a perfect  
5 world, the FCC would review Computer III again,  
6 which was written before DSL and before these  
7 broadband problems started happening. But, since  
8 it's--since enforcement is very lightly staffed at  
9 the FCC, the revision of Computer III Rules, the  
10 revision of rules regarding ONA reports, which  
11 really regard the provisioning of services to  
12 carriers but not to Internet service providers.  
13 And, so, therefore, when we received the ONA  
14 reports in Utah, they were not very revealing at  
15 all in terms of how Internet service providers had  
16 been discriminated against in provisioning. So,  
17 revision of those reports would be excellent.  
18 But, we would settle for enforcement of the  
19 existing rules, because right now we're being told  
20 that the rules are being complied with, but we're  
21 being told--we're being given that assurance by  
22 the ILECs. And, so, we are working on bringing  
23 this to the attention of local Commissions and the  
24 FCC.

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MS. DOUGHERTY:

I have no further questions. Thank you.

CHAIRMAN HELTON:

Thank you. Redirect.

MR. AMLUNG:

Just a moment.

REDIRECT EXAMINATION

BY MR. AMLUNG:

Q Ms. Ashdown, you were asked several questions, specifically by the staff attorneys, regarding what remedies you would like to see to remedy what you perceive as problems and certainly IgLou perceives problems in the Internet industry, specifically in Kentucky. Although I may have not caught the part of your answer, did you propose any state remedies and do you have an opinion on whether the state, specifically this Commission, could impose any, say, regulations or any other remedies that would help alleviate the problems?

A I think it is certainly the state's responsibility to prevent discrimination and to enforce existing laws. There was also, I believe, a code of conduct that was mentioned as a possibility for

1 utilities and their affiliates, and a code of  
2 conduct that addressed any gaps in federal  
3 regulations would probably be a good idea.

4 Q Are you familiar with the terms of that code of  
5 conduct to which you are referring?

6 A I'm sorry, I don't remember the terms  
7 specifically. I mean, I think that the terms of  
8 the code of conduct were basically to prevent the  
9 utility from giving an undue advantage to its  
10 affiliate through things like, including ads in  
11 its bill stuffers that go to customers who have no  
12 choice for Internet--or telephone service.

13 Q Ms. Ashdown, you were also asked several questions  
14 about your area of expertise, at some length.  
15 What is your characterization of your expertise in  
16 the Internet industry?

17 A Well, my expertise in the Internet industry is  
18 that I ran Utah's largest and most successful  
19 Internet service provider for five years. And, in  
20 the course of running that Internet service  
21 provider, founded the Association for Utah  
22 Internet Service Providers. And, together, that  
23 association filed the complaint about the roll out  
24 of DSL in Utah and went to the FCC with our

1 problems, and at the same time that we filed  
2 comments in the FCC's first 706 proceeding,  
3 because we were sufficiently concerned about the  
4 way DSL had been rolled out in Utah, that we  
5 thought that it was worth bringing to the  
6 Commission's attention that this had the potential  
7 to affect other Internet service providers in the  
8 country. And, that was back in--we filed those  
9 comments with the FCC back in the fall of '98.  
10 And, I'm sorry to say, that a lot of the things  
11 that we talked in our filing have come to pass  
12 with other Internet service providers like the  
13 Internet service providers in Kentucky.

14 Q So, you've had regular dealings with the FCC?

15 A I've had regular dealings with the FCC as well as  
16 the Public Service Commission in my own state.

17 Q You were asked to make several corrections of data  
18 to which we erroneously informed you was accurate,  
19 knowing the correction of that data now, do you  
20 have a change in your opinion or your opinions  
21 expressed in your testimony?

22 A Well, I don't have a change in my opinion,  
23 because, again, I believe that BellSouth changes  
24 the terms of its offer quite frequently. And,

1 so, I cannot accurately say today, with any degree  
2 of certainty, whether the modems are being given  
3 to customers or whether customers have to pay for  
4 them. So, I don't know how I could correct that.

5 MR. AMLUNG:

6 Thank you. No further questions.

7 CHAIRMAN HELTON:

8 Ms. Chambers?

9 MS. CHAMBERS:

10 No questions.

11 CHAIRMAN HELTON:

12 Ms. Dougherty?

13 MS. DOUGHERTY:

14 No.

15 CHAIRMAN HELTON:

16 Thank you, Ms. Ashdown.

17 VICE CHAIRMAN HOLMES:

18 I have a couple questions.

19 CHAIRMAN HELTON:

20 I'm sorry.

21 VICE CHAIRMAN HOLMES:

22 As director of the ISP in Utah, did you file a  
23 complaint with the Utah Commission or the FCC?

24 A We filed the complaint with the Utah Commission

1 and when we went to the FCC to speak to them about  
2 the possibility of filing a complaint there as  
3 well, we were told that we definitely had a very  
4 good chance with the complaint on the  
5 provisioning. Interestingly enough, U.S. West was  
6 claiming for a long time that Internet service  
7 providers had to purchase the transport loop from  
8 U.S. West and not from a competitive local  
9 exchange carrier. And, the FCC viewed that as  
10 very much a violation of existing federal  
11 regulations. But the question was, now that we  
12 had been provisioned, what was the--what would be  
13 the benefit for us bringing a complaint since we  
14 had finally gotten what it was that we--we had  
15 finally gotten hooked up. So, we didn't bring a  
16 complaint. Also, I will add that between the Utah  
17 complaint that we filed and our comments in the  
18 706 proceeding, the Utah Association incurred  
19 close to \$50,000 in legal fees, which we are still  
20 paying off. And, at that point, our ability to  
21 file a complaint was pretty limited. Whether it  
22 was under the rocket docket at the FCC or the  
23 regular complaint. So, we didn't pursue it much  
24 further beyond that.

1 VICE CHAIRMAN HOLMES:

2 Okay.

3 CHAIRMAN HELTON:

4 Thank you, Ms. Ashdown. We'll take a break for  
5 ten minutes.

6 (RECESS)

7 CHAIRMAN HELTON:

8 Call your next witness, please.

9 MR. AMLUNG:

10 Thank you, Chairman Helton, Chairperson Helton,  
11 excuse me. For its next witness--let me clarify  
12 on one position. For its next witness, IgLou  
13 calls Danny Gregoire.

14 (WITNESS DULY SWORN)

15

16 The witness, DANNY GREGOIRE, after having been  
17 duly sworn, states and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. AMLUNG:

20 Q Please state your name and business address for  
21 the record, please.

22 A My name is Danny Gregoire. Business address is  
23 3315 Gilmore Industrial Boulevard in Louisville.

24 Q What is your occupation?

1 A Co-founder of the IgLou Internet Services. It's a  
2 rather broad term. We wear many hats in a small  
3 business. So, my range of titles goes from  
4 Assistant Administrator all the way down to  
5 sometimes janitor at times. But--

6 Q Well, what is your relevant experience in regard  
7 to the allegations in this case in general?

8 A Well, I have certainly in my experience in  
9 managing and running IgLou over the years, I have  
10 firsthand experience in this market place in  
11 providing Internet services to--throughout  
12 Kentucky.

13 Q And, how long have you been doing that?

14 A For over a decade now.

15 Q What is the purpose of your testimony in this  
16 case?

17 A The purpose of my testimony is to describe the  
18 discriminatory actions that we feel have been made  
19 against us on the part of BellSouth, not limited  
20 to but certainly the most poignant in the  
21 provision of broadband DSL.

22 Q Was your testimony--have you submitted testimony  
23 in this case?

24 A Yes, I have.

1 Q Direct testimony and rebuttal testimony?

2 A Yes.

3 Q Was that testimony prepared by you or by me on  
4 your behalf?

5 A It was prepared by me.

6 Q Do you have any additions, modifications or  
7 deletions to that testimony, I believe we've  
8 covered that question once?

9 A Well, I would just like to clarify that my  
10 testimony is, to the best of my knowledge--I don't  
11 want to be sort of railroaded into specifics or  
12 semantics or facts but what I have put forth is  
13 the facts to the best of my knowledge.

14 Q If you were to testify today, would your testimony  
15 before this Commission be the same as that  
16 contained in your both direct and rebuttal  
17 testimony?

18 A Yes, it would.

19 MR. AMLUNG:

20 Thank you. I pass the witness for  
21 cross.

22 MR. KITCHINGS:

23 Chairman Helton, may I proceed?  
24

1 CHAIRMAN HELTON:

2 Yes.

3 MR. KITCHINGS:

4 Thank you.

5

6

CROSS EXAMINATION

7 BY MR. KITCHINGS:

8 Q Good morning Mr. Gregoire. My name is Langley  
9 Kitchings, I'll be asking you a few questions  
10 today on behalf of BellSouth.

11 A Good morning.

12 Q Preliminarily, Mr. Gregoire, would you please  
13 describe your educational and business background  
14 prior to founding IgLou?

15 A Prior to founding IgLou my business experience, I  
16 worked at the Jefferson County Planning Commission  
17 in Louisville. It basically evolved into a  
18 programming position. I moved on from there to a  
19 position at the Computer Store, which is the name  
20 location in Louisville, which is a computer sales  
21 facility. From there I moved on into Cooper  
22 Electronics as being an accounting programmer.  
23 And, then grew IgLou from within that position at  
24 Cooper Electronics.

- 1 Q Okay. I believe in your testimony you stated  
2 you've been involved in computers for some twenty  
3 years,--
- 4 A Yes.
- 5 Q --is that correct? Oh, let me go back.  
6 Educational, what is your educational experience?
- 7 A I have some college background.
- 8 Q College degree?
- 9 A I don't have a formal degree. No.
- 10 Q Okay. I believe your testimony also is that  
11 you've been programming computers for some twelve  
12 years, is that accurate?
- 13 A Yes.
- 14 MR. KITCHINGS:
- 15 Okay.
- 16 A Professionally.
- 17 Q Okay. And, how long have you been involved with  
18 the Internet?
- 19 A Since about 19--late '87, early '88.
- 20 Q Now, has the Internet been utilized by the general  
21 public since the 1987, 1988 time frame?
- 22 A No.
- 23 Q When did that start, just generally?
- 24 A It varies. Really, approximately, 1993 is the

1           general time frame when it really began to get the  
2           public's attention.

3       Q     Okay. Now, did you--you formed IgLou prior to  
4           1993, is that correct?

5       A     Not IgLou as a formal corporation, but what grew  
6           into be IgLou was started prior to that time  
7           frame, yes.

8       Q     Okay. Now, I'm going to assume the answer to my  
9           next question, but I assume you do not have any  
10          legal training?

11      A     That's correct.

12      Q     Or hold any sort of legal degrees or any other  
13          advanced degrees?

14      A     That's correct.

15      Q     Okay. Does IgLou provide service--Internet  
16          service today to business and residence customers  
17          in Kentucky?

18      A     Yes.

19      Q     And, it's throughout the geographic area of the  
20          state, it's not confined to any one particular  
21          part of the state, is it?

22      A     It's--well, it's not confined--I mean, it's not  
23          throughout the entire state. It is generally  
24          confined to, I think, what's generally accepted as

1 being the urban triangle area of Kentucky. That  
2 would be the Louisville Metropolitan area,  
3 Lexington Metropolitan area, Cincinnati  
4 Metropolitan area, including Northern Kentucky.  
5 And, as I stated in my testimony, we recently  
6 expanded to cover some of the regions in between  
7 that triangle in the central portions.

8 Q Can you--I'm not trying to ask you for proprietary  
9 information, Mr. Gregoire, but can you tell the  
10 Commission on an order of magnitude how many  
11 customers IgLou has, is it tens, is it hundreds,  
12 is it thousands?

13 A Thousands.

14 Q And, again, that is business and residential?

15 A Yes.

16 Q Okay. Does IgLou provide dial up service to its  
17 customers--dial up Internet service to customers  
18 in Kentucky through other local exchange companies  
19 besides BellSouth?

20 A Yes.

21 Q Do those companies include a company called ICG?

22 A Yes it does.

23 Q And, do you utilize ICG services in BellSouth's  
24 service territory?

1 A Yes.

2 Q Do you know whether ICG uses its own facilities or  
3 whether it resales BellSouth's lines?

4 A They use their own facilities.

5 Q Okay. And, would you say--is it a fair  
6 characterization that IgLou utilizes--  
7 predominately utilizes ICGs network compared to  
8 BellSouth's network within the BellSouth service  
9 territory?

10 A It depends upon your term of utilization. In  
11 reaching our customers there is two parts to every  
12 call, there's the originating portion of the call  
13 and the terminating. The majority of the  
14 originating portion of those calls occur on the  
15 BellSouth's network. It is true that the  
16 terminating portion would end of the ICG network.

17 Q Okay. And, then--

18 A So, in that respect, we do depend upon BellSouth  
19 as well as ICG to reach our customers.

20 Q Okay. But, in that scenario, that's because  
21 BellSouth has more subscribers at this point in  
22 time that would be making calls to an Internet  
23 service provider such as IgLou, right?

24 A Yes.

1 Q Okay. Let's talk about the market place for just  
2 a minute, Mr. Gregoire, and, in particular I want  
3 to focus on the high speed Internet access market,  
4 not just plain old dial-up; is that all right?

5 A Yes, sir.

6 Q Can we agree that high speed Internet access--the  
7 high speed Internet access marketplace is served  
8 by both cable modems and DSL?

9 A Not in all areas. In Louisville that would be the  
10 case.

11 Q Okay. But let's talk generally. Generally  
12 speaking, when we're talking about the high speed  
13 Internet marketplace, aren't we, in fact, talking  
14 about cable modems and DSL?

15 A General as to the entire country, general as the  
16 State of Kentucky, general as to the Community of  
17 Louisville?

18 Q Either way you want to take it Mr. Gregoire.

19 A It is true that both DSL and cable modem are  
20 options in various parts of the country for  
21 broadband access.

22 Q Are there other means of high speed Internet  
23 access besides those two?

24 A There are, but they're not generally considered

1 consumer grade options. There are some that are  
2 sort of considered experimental or sort of on the  
3 edge and they're not very widely deployed.

4 Q Forgive my ignorance, but is ISDN considered high  
5 speed Internet access?

6 A Not necessarily. It is higher--it is true that it  
7 is higher speed than the traditional dial up that  
8 people are used to. But I believe in several of  
9 the definitions used at the FCC they generally cut  
10 off broadband at being 300K or greater, that's 300  
11 kilobits per second or greater. And ISDN does not  
12 meet that requirement.

13 Q But, cable modems and DSL do?

14 A Yes.

15 Q Do you keep up generally with developments in  
16 Kentucky in the high speed Internet access market?

17 A I do the best I can.

18 Q Okay. For example, would you know what retail  
19 prices are for high speed Internet access via  
20 cable modems in Louisville?

21 A Yes.

22 Q What is that?

23 A I believe the last time we checked it was 29.95.

24 Q Does IgLou compete generally with cable modems for

1 high speed Internet access customers?

2 A Generally as in what geographic region?

3 Q Within Kentucky.

4 A No. Not throughout our entire region. We do in  
5 the Louisville marketplace but not throughout our  
6 entire region of Kentucky.

7 Q Only in Louisville?

8 A We do in Lexington. And in Northern Kentucky I'm  
9 not sure how widely deployed it is, but I do know  
10 that there is very limited deployment in  
11 Lexington.

12 MR. KITCHINGS:

13 Okay. Thank you. Chairman Helton, may  
14 I approach the witness? I have a  
15 document I need him to take a look at  
16 and identify.

17 CHAIRMAN HELTON:

18 Certainly.

19 Q Mr. Gregoire, while we distribute copies of this  
20 document, I would ask you to take a look at it,  
21 please, I'm going to ask you a few questions about  
22 it.

23 A Sure.

24 Q Have you had an opportunity to take a look at the

1 document Mr. Gregoire?

2 A Yes, I believe so.

3 Q I have handed you this document, Mr. Gregoire,  
4 which consists of about seven pages. Can you  
5 identify what these seven pages are?

6 A It's a document we put together to explain some of  
7 the differences to our customers about the  
8 difference in reliability and service quality  
9 between cable modems and DSL.

10 Q Okay. And when you say we, you mean IgLou?

11 A IgLou. Yes.

12 Q Okay. Is it fair to characterize these seven  
13 pages as printed pages of an IgLou web site?

14 A Yes.

15 Q Okay. Now, tell me if this is a fair  
16 characterization, but these seven pages consist of  
17 twenty-one reasons to choose DSL instead of cable  
18 modems--

19 A Yes.

20 Q --that a customer can review, I assume, just by  
21 accessing your web site, is that right?

22 A Yes.

23 Q Okay. Could I ask you to read the first  
24 paragraph, beginning at the top of the first page,

1 right beneath the IgStreme DSL block there?

2 A At the very top of the page?

3 Q Yes. Please.

4 A "Thinking of getting a cable modem? Think twice!  
5 Be sure you know all the facts when choosing your  
6 high speed Internet access. IgLou's IgStreme DSL  
7 is the clear choice. Here's why...."

8 Q And, again, the balance of the seven pages are the  
9 reasons why?

10 A Yes.

11 Q Okay. Please turn to page 2. Let me direct your  
12 attention to reason Number 4. I apologize, it's a  
13 little dark and you might not be able to read the  
14 question. But, I would then ask you, if you can,  
15 read the question and the answer, please.

16 MR. AMLUNG:

17 Could you clarify which one is four?

18 Q Reason Number 4, the gentleman with the headset on  
19 the left side of the page has a word  
20 "experienced."

21 A Okay.

22 COMMISSIONER GILLIS:

23 Just a minute. Let me follow along.

24

1 MR. KITCHINGS:

2 Okay.

3 COMMISSIONER GILLIS:

4 I must have the same page twice. Which  
5 page are you on?

6 MR. KITCHINGS:

7 It's page 2, 2 of 7.

8 COMMISSIONER GILLIS:

9 Okay. I have the same first page twice.

10 MR. KITCHINGS:

11 I apologize Commissioner. Did you--are  
12 we together?

13 COMMISSIONER GILLIS:

14 Yes.

15 Q Mr. Gregoire, are you there?

16 A Yes.

17 Q Reason Number 4, would you please read the  
18 question, if you can see it--

19 A Sure.

20 Q --and then read the answer?

21 A How many years has your cable modem provider been  
22 providing Internet access? And the--

23 Q It's actually the question above that, I'm sorry,  
24 in the block.

- 1 A I can't read that on my copy.
- 2 Q Okay. Would you accept, subject to check, that it  
3 reads, "How experienced is your cable modem  
4 provider?"
- 5 A I can't read my copy either. So, I--
- 6 MR. KITCHINGS:
- 7 Okay.
- 8 A --I'm going on your word on that.
- 9 Q If you'll accept that representation--
- 10 A Sure.
- 11 Q --subject to check. Okay. Now, if you would,  
12 then, proceed and read the balance of the ad.
- 13 A "How many years has your cable modem provider been  
14 providing Internet access? Your cable TV company  
15 is in the entertainment business, not the telecom  
16 business. IgLou has been providing Internet  
17 services for more than a decade, and your local  
18 telephone company has been providing reliable  
19 telephone service for nearly a century.  
20 Experience is key in the ever changing world of  
21 the Internet and telecommunications."
- 22 Q Do you stand by those statements made, Mr.  
23 Gregoire, as true?
- 24 A Yes.

- 1 Q Isn't it true that all companies advertise their  
2 services in some fashion?
- 3 A Yes.
- 4 Q Similar--perhaps similar to this? And by that I  
5 mean through the Internet or through direct mail?
- 6 A Any service through any means? Is that what  
7 you're--
- 8 Q No, sir. Isn't it true that companies advertise  
9 their services?
- 10 A Yes.
- 11 Q Okay. And some might be through Internet  
12 advertisements, some might be through direct mail  
13 pieces, correct?
- 14 A Yes; yes.
- 15 Q Okay. Isn't it also true that companies will  
16 generally tout of their own unique abilities or  
17 attributes, like experience?
- 18 A Yes.
- 19 Q And IgLou has done so here, hasn't it?
- 20 A Yes.
- 21 Q And, in fact, IgLou has cited to the local  
22 telephone companies experience of nearly a  
23 century;--
- 24 A Yes, sir.

1 Q --is that correct? Okay.

2 MR. KITCHINGS:

3 Chairman Helton, I would move admission  
4 of this seven page document into the  
5 record as a Cross Examination Exhibit 1  
6 of BellSouth and Mr. Gregoire?

7 MR. AMLUNG:

8 No objection.

9 CHAIRMAN HELTON:

10 So ordered.

11 (EXHIBIT SO MARKED: Cross Examination Exhibit Number 1)

12 Q Thank you, Mr. Gregoire, we won't be referring to  
13 that document--

14 A Sure.

15 Q --any more at this point. We'll move to a  
16 different topic, just briefly, with you about  
17 billing. How does IgLou bill its customers today?

18 A We offer two methods. Customers can choose  
19 between an invoice billing and a credit card  
20 billing.

21 Q Okay. Could you describe those. When you say  
22 invoice billing, is that each month a customer  
23 gets a bill in the mail and he write and check and  
24 sends it back to you?

- 1 A Right. We print out the invoices each month and  
2 send it to the customers who then pay, just as  
3 they would any other bill.
- 4 Q Okay. And what is the other method?
- 5 A Credit card billing.
- 6 Q And is that--how is that accomplished? Is that  
7 accomplished through setting up an account over  
8 the Internet and debiting that credit card  
9 automatically each month?
- 10 A Yes.
- 11 Q Okay. Are there other billing methods that are  
12 available to IgLou?
- 13 A What is--could you be more specific?
- 14 Q Do you know of any other way--
- 15 A Are the billing methods--
- 16 Q --you could bill your clients, other than those  
17 two methods that you are utilizing today?
- 18 A Certainly customers could come in and pay cash.  
19 We address the issue of center for billing on the  
20 telephone bills as a potential option. There are  
21 other options that are available. Yes.
- 22 Q Are there clearing houses that are available that  
23 will bill for ISPs?
- 24 A I don't have direct knowledge of that. I would

1           suspect that there are. I know that there  
2           probably are clearing houses for a number of  
3           businesses. So, I would suspect that there are  
4           for--

5       Q     Okay. Well, can we agree, from this discussion,  
6           that there are a number of options available to  
7           IgLou to bill its customers today?

8       A     Yes.

9       Q     Okay. Mr. Gregoire, in your testimony,  
10          specifically pages 18 and 19 of your rebuttal  
11          testimony. I don't know if you want to look at  
12          it, you certainly can. You discuss BellSouth's  
13          offering of complete choice and fast access  
14          together. In relationship that testimony, is  
15          IgLou a competitive local exchange carrier in  
16          Kentucky, commonly referred to as a CLEC?

17      A     You say this is in reference to page 8 of my  
18          rebuttal?

19      Q     Eighteen and nineteen,--

20      A     Eighteen?

21      Q     --I'm sorry, of your rebuttal testimony.

22      A     Give me a moment to get there. Okay. And the  
23          question once more was--

24      Q     Sure. Is IgLou a competitive local exchange

1 carrier or what we refer to in the industry as a  
2 CLEC--  
3 A No.  
4 Q --in Kentucky  
5 A We are not. No. We are not.  
6 Q Why not?  
7 A It--there are a number of reasons. It's a very  
8 expensive process to become a CLEC. It's an  
9 entire legal organization to have to come up with  
10 being a CLEC. There are a number of additional  
11 responsibilities that go beyond what we consider  
12 to be our core business of being an ISP, and it's  
13 not part of the responsibilities. I mean, it can  
14 be argued that we could manufacture the modems  
15 that we use in our business as well, but we choose  
16 not to do that for the same reasons, it's just not  
17 our core business to be that portion of the  
18 business.  
19 Q Are you specifically aware of what the Kentucky  
20 Commission's requirements are for becoming a CLEC?  
21 A I am not. No.  
22 Q Okay. Do you know--  
23 A I have seen price tags based upon what certain  
24 types of attorneys will offer for doing those and

1 it's--can be quite prohibitive.

2 Q Is it your understanding that a, I believe you  
3 called it a legal organization, is required or a  
4 legal agency is required for you to become a CLEC?

5 A No. Not a legal organization, it's just the  
6 process. There's a legal process to it and that  
7 adds an additional expense that goes above and  
8 beyond what we do in our day to day business in  
9 providing Internet access to our customers.

10 Q Would you characterize the Commission's procedures  
11 to become a CLEC as onerous and burdensome?

12 A I wouldn't state it as either of those two.  
13 It's--I don't have a direct knowledge of that  
14 process. I don't think it's their intent to make  
15 it onerous and burdensome. But, for us, again, is  
16 an additional barrier that we would have to do to  
17 provide some of these services as BellSouth has  
18 suggested.

19 Q Okay. Well, is it your understanding, as to the  
20 complete choice package of services offered by  
21 BellSouth, is it your understanding that if IgLou  
22 were, hypothetically, a CLEC, that it would be  
23 allowed to resale complete choice at a discount?

24 A There are a number of things that, hypothetically,

1 would occur, if you--if we were a CLEC. Yes.

2 Q Is that one of them,--

3 A And, that would--

4 Q --the ability to resale complete choice?

5 A I assume--I'm going on the understanding that it's  
6 BellSouth's responsibility to unbundle these types  
7 of services. So, I don't have any specific  
8 knowledge that that--that the complete choice--I  
9 have not seen any documents stating that complete  
10 choice specifically is available as one of those  
11 types of unbundled pieces. But, going under the  
12 assumption that they should be, yes, that would be  
13 an option that the CLEC would have access to.

14 Q Is it your--are you advocating that IgLou should  
15 be allowed to resale complete choice without  
16 becoming a competitive local exchange carrier in  
17 Kentucky?

18 A No. I was advocating the fact that the  
19 arrangement between whatever BellSouth.net is and  
20 the telephone company, there appears to be some  
21 advantage in this marketing arrangement that is  
22 provided there. And, I presumed, originally, that  
23 that marketing advantage was that BellSouth wanted  
24 to sell these telephone services to ISP customers.

1           And, in exchange for that, that they were offering  
2           some sort of discount or rebate to the ISP as it  
3           appears that BellSouth.net is receiving under  
4           these circumstances. So, I presumed in contacting  
5           BellSouth regarding the complete choice program  
6           that we would be able to market the services of  
7           BellSouth, telephone services, caller I.D., to our  
8           customer base and that BellSouth would be  
9           interested in that arrangement and might be  
10          willing to compensate us. But, as we found out,  
11          that's not an option for us as ISPs. So, it  
12          appears that that marketing arrangement is not an  
13          option--is not something that BellSouth is using  
14          as a tool to sell those tools. And it is  
15          specifically a marketing arrangement between .net  
16          and .com in tying those services together and  
17          nothing more.

18        Q        You're certainly entitled to your opinion, Mr.  
19                Gregoire, as to what motivates BellSouth and who  
20                the actual entities are, but that's not my  
21                question. Let me move on in this same vein though  
22                and ask you a more specific question. Putting  
23                aside regulated telecommunication services, is  
24                there anything that precludes IgLou from bundling

1 its Internet service with anything else? For  
2 example, or hypothetically, discounted movie  
3 tickets?

4 A No.

5 Q Is there anything that precludes IgLou from  
6 bundling its services with \$50 gift coupons at  
7 Barnes and Noble?

8 A No. Other than the costs or whatever the specific  
9 arrangements would be under that contract. I  
10 mean, there could be specific things that are  
11 burdensome that we wouldn't agree to under those  
12 types of contracts. So, I can't state on a case  
13 by case basis.

14 Q Sure. But--

15 A But, in general, there's--there would not be a  
16 legal distinction preventing us from doing that--

17 MR. KITCHINGS:

18 Okay.

19 A --that I'm aware of.

20 Q Is it fair then to characterize that there are any  
21 number of non-regulated goods and services that  
22 IgLou could theoretically package along with its  
23 Internet service?

24 A With the same qualification that I made before,

1 based upon whatever the stipulations of the  
2 arrangement of the sale would be, that would be  
3 the case.

4 Q Okay. Thank you. Mr. Gregoire, I think you  
5 stated this earlier, but is it your testimony that  
6 there is no competition outside of BellSouth in  
7 Louisville today in the provision of DSL service?

8 A There is no competitive choice of services  
9 available outside of BellSouth today for--coming  
10 from the ISP side of things, that was the  
11 statement that was made, I believe.

12 Q Okay. Now, we've already covered that, in fact,  
13 cable modems are available in Louisville today.

14 A Yes.

15 Q And, I believe you said they are priced at about  
16 29.95?

17 A Yes. But, they are not an option for ISPs.

18 Q Okay. Have you ever heard of a company called  
19 Covad?

20 A Yes.

21 Q Who is Covad?

22 A Covad is a nationwide reseller of DSL services.  
23 They're known as a data LEC, similar to CLEC, but  
24 they generally provide only the data portion to,

1 generally, ISPs or other types of reseller  
2 environments.

3 Q Okay. And like the acronym CLEC, I guess the  
4 acronym DLEC would apply to Covad; is that  
5 correct? A data local exchange company?

6 A That would be my interpretation. Yes.

7 Q Okay. Are you aware of whether or not Covad is  
8 providing or offering DSL service in Louisville  
9 today?

10 A I'm not aware whether they are or not. It's been  
11 a number of months since we've contacted them. I  
12 do know specifically in that time frame, since we  
13 last contacted them, there has been a great deal  
14 of discussion among ISPs across the country  
15 regarding Covad's policies. And they've recently  
16 updated those to limit the size and number of ISPs  
17 that they're accepting in the resale arrangement.

18 Q When did you last check with Covad?

19 A I believe in the January time frame.

20 Q January of 2000?

21 A Yes.

22 Q Okay. I'm going to ask you if you are familiar  
23 with a couple of company names and I'll, in trying  
24 to be short with this, Mr. Gregoire, I'll put a

1           few together and if you want to break them out,  
2           please feel free to do so, but, my question to you  
3           is, are these companies Internet service  
4           providers? Union Net, RCN Corporation--

5    A       Yes.

6    Q       --Junk Net, Vast Point Communications, Big Net,  
7           Inc., and Speakeasy.Net.

8    A       It varies in the overall definition of what some  
9           of those might be as ISPs. The general definition  
10          may fit some of them, others--the term ISP is very  
11          loosely applied to, really, anyone that provides  
12          Internet services. But the general assumption  
13          and/or portrayal in the media and the  
14          understanding among ISP providers is that it's  
15          generally--someone who has a regional or direct  
16          contact with customers. Many of those places are  
17          resellers. But, in particular--it depends on,  
18          really, the context that they're mentioned in. I  
19          know Union Net, for instance, is a reseller to  
20          places like Microsoft. So, Microsoft uses the  
21          facilities of Union Net to provide their Internet  
22          services. So, in that particular context Union  
23          Net is not the ISP. And it's questionable, also  
24          in that context, whether Microsoft is considered

1 an ISP, because they're not a facilities based.  
2 So, it really depends upon the context of that as  
3 to whether those are ISPs.

4 Q Okay. But, of those six companies that I named,  
5 do they have ISP--do they serve as an ISP among  
6 their other functions?

7 A Can you list the six companies once more?

8 Q Sure. Union Net, RCN Corporation, Junk.Net, Fast  
9 Point Communications, Big Net, Inc., and  
10 Speakeasy.Net.

11 A Union Net is the only one that I'm familiar with.

12 Q Okay. You're not familiar with the rest?

13 A No.

14 Q Okay. Did you say earlier whether or not you were  
15 aware that Covad is offering DSL service in  
16 Louisville?

17 A I said I wasn't aware of whether they were or not.  
18 The last time I checked in the January time frame,  
19 they--as they had been saying for several months,  
20 that they were coming to Louisville at that time,  
21 but I don't have any further knowledge to whether  
22 they are providing services in Louisville or not.

23 Q Would you be surprised to know that they are  
24 advertising themselves as providing DSL service

1 through Internet advertising?

2 A Wouldn't necessarily surprise me. No.

3 Q Okay. Would you be surprised to know that those  
4 companies that I named to you, along with  
5 approximately fourteen others, are identified as  
6 Covad Telespeed featured service providers in  
7 Louisville, Kentucky?

8 A That wouldn't necessarily surprise me either.  
9 There are a number of those types arrangements  
10 with companies like Covad to where ISPs wear those  
11 with badges to be nationwide providers. And,  
12 whether or not they specifically provide on an  
13 active basis, meaning that they actively solicit  
14 business within Louisville versus, you know, we're  
15 blanket--we cover the entire country and where  
16 Covad is, we're there. It's sort of a badge that  
17 they wear as being a nationwide provider.

18 Q You're not suggesting that Covad or any of these  
19 companies would engage in false advertising, are  
20 you?

21 A No.

22 Q Okay. Let's turn our attention, Mr. Gregoire, to  
23 the, so called, free ISP model. There was a  
24 little bit of discussion about that this morning.

1           Were you here for Ms. Ashdown's testimony?

2    A       Yes.

3    Q       Okay. And, you heard the discussion between her

4           and Ms. Chambers and others--

5    A       Yes.

6    Q       --about free ISPs? Okay. Do you disagree with

7           the viability of the free ISP model?

8    A       Yeah. I think there area a number of issues that

9           --regarding the free ISP model, I specifically, in

10           my testimony, mentioned Net Zero, they're one of

11           the more well known examples of that. Their

12           original business plan was designed to generate

13           revenues based upon getting people to watch banner

14           ads. So, the longer you were on line, the more

15           banner ads that appeared before you, the more

16           money Covad got from these advertisers who try and

17           compensate them for provision of the Internet

18           services to you. Since the original opening of

19           that business plan, they've had to change models

20           and try to come up with other ways to get

21           advertising revenue, because the banner ads

22           themselves were not covering the costs. What they

23           found, in fact, were that the advertisers were

24           less and less willing to pay high rates for these

1 ads for customers who were paying nothing for  
2 their Internet services. Why would they be  
3 compelled to pay to advertise to people who are  
4 paying nothing for the service. So, it was not  
5 the type of clientele that the people were willing  
6 to pay higher rates for to get to. And, over  
7 time, they've had to adjust the business model as  
8 a result. So, that adjustment, I think, is  
9 testimony that the original assumptions of  
10 providing free ISP services are not necessarily  
11 founded.

12 Q Your--you did, in deed, attach to your rebuttal  
13 testimony an exhibit regarding Net Zero?

14 A Yes.

15 Q And that is at, I believe--I don't have the number  
16 in front of me, but I believe it was Exhibit 2-I.  
17 What I would ask you to do, sir, is turn to  
18 Exhibit 2-J, which is the exhibit directly after  
19 that attached to your rebuttal testimony.

20 A Yes.

21 Q That's by Biz Journals.com.

22 A Yes.

23 Q Are you there?

24 A Yes. I am.

1 Q Could I ask you to read the first two paragraphs  
2 of that article?

3 A "A new breed of competitors looms ahead of  
4 Internet service providers and their price. Free  
5 is hard to beat. Some industry observers say the  
6 trend of new Internet service providers, ISPs,  
7 offering free access may force other ISPs to  
8 eliminate or cut their fees. One analyst has even  
9 predicted that all Internet access will be free in  
10 six to twelve months."

11 Q So, can we agree then, based upon that article  
12 which you offered, Mr. Gregoire, that, in fact,  
13 there are counter opinions to yours about the  
14 viability of the free ISP market?

15 A Absolutely. I think the fact that Net Zero  
16 started their business in the first place shows  
17 that there is contrary opinion to mine.

18 MR. KITCHINGS:

19 Thank you, Mr. Gregoire. Thank you,  
20 Chairman Helton. That's all I have.

21 CHAIRMAN HELTON:

22 Ms. Dougherty.

23 MS. DOUGHERTY:

24 I have a few questions to ask you.

1 CROSS EXAMINATION

2 BY MS. DOUGHERTY:

3 Q Have you sought a billing and collection contract  
4 with BellSouth for your services?

5 A Yes, we did.

6 Q Can you tell us what the outcome of that was?

7 A We were denied. Basically, around the same time  
8 frame that we were trying to negotiate getting DSL  
9 for our company, so it would be in the August to  
10 October time frame of 1999. One--I'd like to note  
11 that one of the advertising points that BellSouth  
12 regularly promotes is the fact that you get your  
13 Internet services on the same bill that you get  
14 your telephone services paid for. So, clearly,  
15 they see that as a marketing item and it's used  
16 quite widely. So, it's generally accepted by them  
17 that this is an important selling point to  
18 customers being able to pay for your Internet  
19 services on your telephone bill. So, at that time  
20 I contacted our BellSouth representative asking  
21 what would be necessary, you know, they're  
22 billing, BellSouth.net, is billing for their  
23 services on the telephone bill, what would IgLou  
24 need to do to do the same? I was told in response

1 that there was no tariff available in Kentucky to  
2 allow us to bill and that to provide us the  
3 ability to bill would require a special contract.  
4 In that special contract there is a fee just to  
5 negotiate the contract alone, not to provide the  
6 billing. That fee to negotiate that contract was  
7 \$70,000, and that is significantly prohibitive for  
8 IgLou to invest just to even begin doing the  
9 billing on the telephone bills.

10 Q Pages 7 and 8 of your testimony, you make  
11 statements, allegations, about busy signals and  
12 line noise for your customers as they're reaching  
13 your ISP.

14 A Yeah.

15 Q Is that still occurring in your viewpoint?

16 A Yeah. Line noise is still a very real issue for  
17 all ISPs. Customers generally expect--they go out  
18 and buy a shiny new 56K modem, they plug it into  
19 their computer, they think they're going to get,  
20 you know, it's--53 is the legal limit posed across  
21 regular lines. So, they expect they're going to  
22 get pretty close to the 53K. But, depending upon  
23 neighborhoods that people live in, that  
24 expectation can be quite widely ranged. Certain

1 neighborhoods can expect regular connect rates of  
2 half of what is advertised on the modem itself,  
3 particularly--specifically limited to the type of  
4 line quality that exists between that customer and  
5 IgLou.

6 Q You talked quite a lot about the relationship  
7 between yourself--your customers and BellSouth and  
8 that BellSouth is, I think the word you might use  
9 is leveraging, on page 9 at line 259, about the--  
10 their relationship with the customer to, and I  
11 think the word you used is steal your customers.  
12 At lines 238 to 245 there are specific times there  
13 that BellSouth has to contact these customers. Is  
14 this the center of your concern here about this  
15 relationship that BellSouth naturally has with  
16 your customers?

17 A It's very concerning that BellSouth uses these  
18 types of opportunities as a selling opportunity  
19 for their own services that competes with IgLou.  
20 We noted quite extensively, and just even recently  
21 in January of this year, we experienced the  
22 problem with--these were with BellSouth lines, not  
23 ICG that we use to serve the--I mentioned before,  
24 the center of the Urban Triangle, we use BellSouth

1 facilities for that. During the January time  
2 frame we had asked to have additional services  
3 deployed on January 17th, I believe, was the date.  
4 Those services were not fully installed for two  
5 weeks as a result of BellSouth's misprovisioning  
6 of the lines. During that time frame we  
7 continually contacted our representatives at  
8 BellSouth saying, these are lines--the new lines  
9 are not working, we're having a problem with them,  
10 because during that time frame our customers were  
11 receiving busy signals when we should not have  
12 busy signals. And, as I stated in my testimony,  
13 busy signals are a very sticky point for the  
14 customers of ISPs, they really--when they pay for  
15 a service, they want the ability to use it at  
16 their own discretion, when they want. So, when  
17 they get a busy signal, it's a very big source of  
18 irritation. So, during that two week time frame,  
19 our customers received extensive busy signals.  
20 And, as a result, customers were upset, because,  
21 as Mr. Danak noted in his testimony, we made the  
22 promises, where the other ISP didn't, that we do  
23 our best effort to insure that doesn't happen.  
24 And, within a few months of entering this

1 marketplace in those areas, they were providing  
2 busy signals. And it was not the result of  
3 IgLou's fault that those busy signals were taking  
4 place. During that time frame, specifically, I  
5 know in the Carrolton area, there was what's  
6 called an intelligent busy signal, where a  
7 customer can press 1 to leave a message when they  
8 get a busy signal and call back. Modems do not  
9 like that busy signal, generally, if they  
10 recognize a busy signal, they wait five seconds or  
11 so and will try back again and keep trying until  
12 they get in. That's not the ideal solution for a  
13 customer, but it is a solution. Customers who  
14 realize that this was a busy signal on their line,  
15 called BellSouth to say, how do I get this off of  
16 my line so that I can do like I used to do in  
17 repeated dialing, so my modem can recognize a busy  
18 signal? We noted that one customer and one test  
19 call that we did, that BellSouth used that as an  
20 opportunity to sell to the customer and noting  
21 that you obviously don't have BellSouth.net if  
22 you're getting busy signals with your ISP. And,  
23 clearly, BellSouth realizes busy signals are an  
24 issue, because it's a sales point at that point to

1 provide as a means to switch.

2 Q Thank you. You talked about BellSouth.net and its  
3 relationship to the general public. I'm looking  
4 at page 7 of your rebuttal testimony at line 148  
5 on the marketing of services by BellSouth Telecom  
6 and BellSouth.net. And you talked about  
7 BellSouth's position in selling Internet access to  
8 the general public. Why do you consider whether  
9 BellSouth.net sells to the general public or to  
10 other companies only to be significant?

11 A Well, I felt it was significant in my rebuttal  
12 testimony because each of the witnesses of  
13 BellSouth made a very strong point and they've  
14 made points all along the way in our complaint  
15 process that there is that distinction between  
16 those two companies, that BellSouth.net,  
17 Incorporated, which is a very confusing term, they  
18 seem to be able to use BellSouth.net at whim is  
19 exactly what they're applying it to. But I found  
20 numbers of press releases which specifically  
21 mentioned the president of BellSouth.net,  
22 Incorporated, in the position of selling services  
23 to the public and that is completely contradictory  
24 to the statements made by the witnesses of

1 BellSouth.

2 Q On page 9 of your rebuttal testimony, at line 198,  
3 you reference a list that credits BellSouth.net as  
4 the second largest ISP in the Southeastern U.S.?

5 A Yes.

6 Q Do you know what the largest ISP is?

7 A No, I do not.

8 Q Okay. Are you the largest ISP provider in  
9 Kentucky that's independent from BellSouth?

10 A It depends--there--again, that's a semantics  
11 that's used in various terms. By customer base,  
12 we're the largest independent ISP in Kentucky at  
13 this point. There have been other larger ones but  
14 they have been acquired and jumped into a larger  
15 mass of customers that reach other people. So,  
16 it's--at this point, we have the largest  
17 independent to my knowledge.

18 Q I just have a few more questions for you.

19 A Sure.

20 Q You talked in your testimony, of course, at length  
21 about various problems that you consider to exist  
22 in the ISP market in Kentucky and you've come to  
23 this Commission asking for some remedies. What,  
24 specifically, is it that you want this Commission

1 to do to solve the problems that you've alleged?  
2 A Much as Ms. Ashdown had noted in her comments to  
3 that, a start would be to the enforcement of  
4 existing rules. And, as we mentioned in our  
5 complaint, the discrimination issue is cited in  
6 the Kentucky Regulatory Statutes. The addition of  
7 what was discussed is the code of conduct for  
8 utilities goes a long way to prevent the types of  
9 abuses that IgLou is experiencing in the current  
10 marketplace.  
11 Q Your rebuttal testimony, I'm sorry, I couldn't  
12 find the designation of this specific document, it  
13 might have just been my copy, but in the pile of--  
14 the last couple of documents were from other  
15 jurisdictions, Washington UTC and the Oregon PUC.  
16 I'm trying to help you get to the list that you  
17 wanted to--I am looking at a list of ten items  
18 that the Washington UTC staff recommended  
19 regarding some of these similar issues that we're  
20 talking about today. It's page 2 of 3 of that  
21 document that is attached.  
22 A Yes.  
23 Q And, maybe the second or third to last. Are you  
24 there?

1 A Yes.

2 MS. DOUGHERTY:

3 Okay.

4 MR. AMLUNG:

5 For clarification, I believe that's  
6 Exhibit 2-P, I could be wrong about  
7 that.

8 MS. DOUGHERTY:

9 It may be. I couldn't find those  
10 markings on my documents. I'm sorry.

11 MR. AMLUNG:

12 I apologize. We may not have tabbed  
13 all--enough copies.

14 CHAIRMAN HELTON:

15 Document 2 what?

16 MR. AMLUNG:

17 Two-P, I believe. Am I correct?

18 A It's the following one. It's the 2-Q.

19 MR. AMLUNG:

20 Two-Q.

21 A The one that specifically mentioned the ten items  
22 she's referred to, on page 2 of that exhibit.

23 Q Is it your understanding, based on this list of  
24 items here, that U.S. West in this instance may be

1 providing DSL in a manner that's closer to the GTE  
2 model in Kentucky than the BellSouth, do you know?  
3 That is, on a retail basis?

4 A I'm not certain on that.

5 Q Looking at items 4, 5 and 6 of that list, are  
6 those items that you would be interested in this  
7 Commission requiring out of BellSouth?

8 A It would go to helping, certainly in the provision  
9 of DSL. The discrimination issues that we brought  
10 up in our complaint go beyond DSL deployment and  
11 go back into dial up as well. So, the  
12 discrimination is not limited to DSL, but it is  
13 most harmful because they're able to have more  
14 control in that deployment. These steps here,  
15 that you've pointed out, do help alleviate some of  
16 the issues there. And, as we've noted in some of  
17 our testimony, some of those items are provided by  
18 GTE in their model, as far as providing the  
19 customer choice in which ISPs to choose from.  
20 BellSouth in their current deployment does not and  
21 in general will--in every chance they get, direct  
22 the customer to their own fast access product.

23 Q You mention that IgLou provides service in the  
24 Lexington area as well. I assume that means that

1 the carrier you're interfacing there with is  
2 GTE;--

3 A That's correct.

4 Q --correct? What is it that GTE does differently  
5 than BellSouth? I've heard you mention before  
6 that you thought that GTE was providing some of  
7 these services in a way that was more helpful to  
8 you.

9 A They're still in the same position of being able  
10 to perform some of the discriminatory practices  
11 that we've described. I can't, to my knowledge,  
12 say that is 100 percent not happening, but GTE has  
13 made efforts in their provision of DSL to ISPs to  
14 provide tools and an environment that is good for  
15 the ISPs to deploy these services. In Lexington  
16 alone, as we noted in our testimony, there is more  
17 than ten, I think eleven providers of DSL, local  
18 providers, not nationwide providers, general local  
19 providers in the Lexington area that are deploying  
20 access there, because the environment is good.  
21 For that same reason, cable modems have been  
22 fended off in that environment and GTE is aware of  
23 this, that using the ISPs in our discussions with  
24 our reps at GTE, that the real threat is not the

1 other ISPs but it is cable modems, and that any  
2 tool they can use to deploy the DSL technology as  
3 widely as possible is a good thing. And they see  
4 working with the ISPs as closely as possible as a  
5 good thing, and we feel that they've made that  
6 effort.

7 Q Do you obtain DSL service from GTE on a--do your  
8 customers obtain it on a retail basis?

9 A Yes. That's significant from the standpoint that  
10 that's how regular dial up service works.

11 Customers are generally accustomed to being able  
12 to, when they purchase access from an ISP, they  
13 understand that they need to get some type of  
14 transport to get to the ISP, some type of line.  
15 So, if they move into an apartment or they go out  
16 and buy a computer and they need a second line,  
17 they understand they need to call the phone  
18 company to get that line for their computer to get  
19 through an ISP such as IgLou. And GTE has  
20 deployed one model that allows them to do that,  
21 allows the customer to call, like they would  
22 understand, to get the line to IgLou. And, GTE  
23 generally does the correct thing of saying when  
24 they receive that call, who would you like your

1           ISP to be, oh, IgLou, they're one of the people we  
2           provide DSL from, we'll get you set up, here's the  
3           information you need. Thank you very much. And  
4           that process is much more pleasing than the one  
5           that takes place with BellSouth. BellSouth,  
6           because they do not have that environment, the  
7           customer who understand when they contact the  
8           phone company to get this line, it's a sales  
9           opportunity for BellSouth then at that point to  
10          sell them DSL--their own DSL product, not as a  
11          means to provide access to the people they're  
12          trying to sell access to as well.

13        Q     And, do you have volume discount issues with the  
14              GTE Tariff or DSL?

15        A     No. It's purely because it's a retail issue, the  
16              customer pays for the line, just as they would the  
17              regular telephone line. So, they get the bill on  
18              their telephone bill for the line and the service  
19              to get to IgLou. Once they get to IgLou, we issue  
20              a separate bill for our Internet services. Under  
21              the BellSouth model, they've divided that roll and  
22              it offers some confusion to the customer.

23        Q     And, I assume then, you don't have the same  
24              termination charge--early termination charge?

- 1 A No. No. The penalties that exist in the  
2 BellSouth contract, do not exist in the contract  
3 that we have with GTE. It's purely--I mean, we  
4 can sell one line with GTE or a 1,000. There is  
5 no requirement. And, the pricing--  
6 Q IgLou also--I'm sorry.  
7 A I'm sorry. Go ahead.  
8 Q IgLou also provides service in Northern Kentucky  
9 through--  
10 A Yes.  
11 Q --through Cincinnati Bell, is that correct?  
12 A Yes.  
13 Q And, do you have these issues with Cincinnati  
14 Bell?  
15 A We've had some other issues in our deployment of  
16 DSL in there that has delayed our deployment.  
17 They're not specific to that type of environment  
18 with Cincinnati Bell. They're specific on the  
19 technical issue of actually getting facilities to  
20 IgLou and provision of that.  
21 Q So, you currently do not use DSL service in  
22 Northern Kentucky?  
23 A That's correct.  
24 Q I assume you've done some investigatory work about

1 providing DSL in Northern Kentucky?

2 A Yes.

3 Q Do you know whether Northern--whether Cincinnati  
4 Bell will provide DSL service on a retail basis?

5 A My understanding is that they do. Yes.

6 Q And, then the issues about the tariff discount and  
7 the early termination fee would not be  
8 applicable--

9 A Right.

10 Q --there either. Let me ask you, in general,  
11 because of your familiarity with these areas, do  
12 the terms DSL and broadband mean identical things  
13 or are they--is one a sub-set of the other or how  
14 would you describe those in your use?

15 A I would describe DSL as a sub-set of broadband.

16 Q Broadband includes more services than--

17 A Yes.

18 Q And what, in addition to DSL, does broadband  
19 encompass?

20 A As I mentioned earlier, it generally is  
21 description of a consumer grade type product that  
22 is greater than 300K is what I've seen in the  
23 documents at the FCC. So, going by that  
24 terminology, cable modem is a portion of broadband

1 as well. Some people could argue that the T1  
2 access and those types of things are broadband,  
3 but they're generally cost prohibitive for  
4 consumer grade product.

5 Q You provide service to your customers through  
6 regular phone lines and then through DSL. Are  
7 there other means that you do use or--

8 A Well, we provide services as well where people who  
9 have access through another ISP can utilize  
10 services with us, such as web hosting. We also  
11 have what are called shell access accounts, it's  
12 the ability for a customer to get access to the  
13 operating system--the unit's operating system and,  
14 for some people, that's an important service, but  
15 they do not necessarily have to have dial up  
16 capabilities with us. So, it's a side service  
17 separate from the other ones that we provide.

18 MS. DOUGHERTY:

19 I have no further questions.

20 CHAIRMAN HELTON:

21 Redirect.

22 MR. AMLUNG:

23 Thank you.

24

1 REDIRECT EXAMINATION

2 BY MR. AMLUNG:

3 Q Mr. Gregoire, you were asked several questions  
4 throughout this proceeding, most notably in my  
5 mind was--and probably the most prominently in  
6 your rebuttal testimony having to do with  
7 BellSouth.net, Incorporated, dealing with the  
8 public. Could you explain to the Commission why  
9 that's relevant to this proceeding in light of the  
10 allegations made in our complaint against  
11 BellSouth.net, Inc., and BellSouth  
12 Telecommunications?

13 A Well, it's relevant, certainly, as I mentioned,  
14 because of the issue of, it doesn't go along with  
15 what is being described as the process of  
16 provisioning of Internet services by BellSouth.  
17 BellSouth maintains that they purchase all of  
18 their services from this internal company and then  
19 turn around and sell them to the public but, in  
20 the documents that are provided, that doesn't  
21 appear necessarily to be the case. That can be  
22 significant because you've got ability for the  
23 separate affiliates within the company to have  
24 preferential treatment by BellSouth, if that is,

1 in deed, the case. There are certain issues about  
2 discriminatory practices with an affiliate that  
3 raises serious questions about certainly.

4 Q Thank you. You were also asked about the code of  
5 conduct or you may have brought it up on your own.  
6 Could you explain a little bit what that is, what  
7 provisions you're referring to and how that would  
8 help your company?

9 A It was--there was a code of conduct, as I stated  
10 in my press--in my testimony here, that there was  
11 a press release issued by the Commission here,  
12 it's item 2-U of my testimony, Exhibit 2-U, dated  
13 February 18th of 2000, that describes the  
14 importance of this code of conduct and how it  
15 relates to preventing utility--it says here  
16 specifically, code of conduct issued today was  
17 established to insure that utilities providing  
18 non-utility services do not use utility assets or  
19 utility customer information to gain a competitive  
20 advantage over other companies providing similar  
21 services. The press release goes on to  
22 specifically mention Internet access as one of  
23 those provisions. Upon reading this press release  
24 we were very excited to see that the Commission

1 was potentially taking some action against these  
2 types of discriminations by a utility using its  
3 non-regulated services against a competing company  
4 such as IgLou. But, to our dismay, we found that  
5 there was an exemption in that code of conduct for  
6 telecommunications companies such as BellSouth.

7 Q Thank you. In your questioning, you were also  
8 asked about other jurisdictions, which I believe  
9 you brought up in your rebuttal testimony. Are  
10 there any other jurisdictions that you haven't  
11 mentioned in this proceeding which have dealt with  
12 similar issues?

13 A There have been--I've tried to do as much research  
14 as I could on that matter. I know there--I've  
15 heard about a number of states taking somewhat  
16 similar actions. The only other state that I have  
17 been able to find, a similar action took place in  
18 Minnesota, it was, again, against U.S. West. And,  
19 that particular case, the Attorney General's  
20 Office became heavily involved in it because they  
21 saw that there was such an issue of anti-  
22 competitive practices going on that they felt the  
23 need to protect consumers, above and beyond what  
24 the PSC was doing at that point. And they stepped

1 in and issued--I don't know right off the top of  
2 my head all the stipulations that came about but  
3 there was a settlement that was significant in  
4 that case for ISPs. And I specifically noted that  
5 U.S. West was using discriminatory practices in  
6 their deployment of DSL.

7 Q Do you have documentation to support your  
8 knowledge?

9 A I do here somewhere.

10 Q But it hasn't been filed in this proceeding?

11 A No.

12 Q You were also asked, I believe this may be my last  
13 question, why--you made the assertion and I may  
14 have misunderstood, why discrimination in DSL is  
15 most harmful. I believe you may have been  
16 comparing it to dial up and I wanted to clarify  
17 that answer or give you the opportunity to.

18 A There are issues about it being most harmful,  
19 particularly, since broadband is so important to  
20 the future of Internet access. The capabilities  
21 of a dial up modem, what can be done over a  
22 traditional dial up line using modem technology,  
23 has reached its limits. Broadband is the next  
24 step for ISPs to be able to reach their customers.

1 If ISPs can't utilize that service readily in  
2 reaching its customers, it's a very significant  
3 hinderance for ISPs in growing towards the future.

4 MR. AMLUNG:

5 Thank you.

6 CHAIRMAN HELTON:

7 Mr. Kitchings?

8 MR. KITCHINGS:

9 Yes. Chairman Helton. Thank you.

10  
11 RE CROSS EXAMINATION

12 BY MR. KITCHINGS:

13 Q Mr. Gregoire, just a couple of follow-up  
14 questions, following up to some conversations you  
15 had with Ms. Dougherty. Are you aware that the  
16 tariff that BellSouth has and the tariff that GTE  
17 have are both on file at the FCC--

18 A Yes.

19 Q --regarding DSL?

20 A That's my understanding. Yes.

21 Q Perhaps I misunderstood, I thought you made  
22 reference to a contract as opposed to a tariff.  
23 But it is your understanding that both of those  
24 are--

1 A Yes.

2 Q --tariffed offerings at the FCC?

3 A Yes.

4 Q Thank you. Okay. Now, you have stated that you  
5 prefer the retail FCC tariff model over  
6 BellSouth's wholesale FCC tariff model, is that  
7 correct?

8 A Yes.

9 Q Is it true that some ISPs are not, in fact, happy  
10 with GTE's retail model?

11 A It is true. There are ISPs that have differences  
12 with probably a number of telephone companies for  
13 various reasons. I'm not specifically  
14 knowledgeable about what those specific issues  
15 about DSL are.

16 MR. AMLUNG:

17 I'm sorry. I just want to clarify. I  
18 may have misheard. You were asking him  
19 a comparison between the BellSouth  
20 wholesale model and the GTE retail  
21 model?

22 MR. KITCHINGS:

23 Those tariffs.

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MR. AMLUNG:

I thought you said FCC.

MR. KITCHINGS:

Those FCC tariffs--

MR. AMLUNG:

Okay.

MR. KITCHINGS:

--both of which are on file with the  
FCC.

MR. AMLUNG:

I missed the GTE part.

MR. KITCHINGS:

That's right. You got it.

Q Okay. So, it would be fair to say then, Mr. Gregoire, that you don't represent all ISPs when you say that you are happy with GTE's retail model?

A In my discussions with other ISPs in Kentucky, the ISPs that I have spoken with who do provide access in the GTE area are please with the GTE area. So, in speaking of the ISP's relevancy to Kentucky, I think I speak with a common voice there, but, I personally, do not represent the opinions of every ISP.

1 Q Okay. But, again, GTE's tariff is on file with  
2 the FCC, so ISPs nationally take from that tariff,  
3 don't they?

4 A In the areas that GTE provides services.

5 MR. KITCHINGS:

6 Sure.

7 A Yes.

8 Q Sure. And, in fact, you said earlier that not  
9 everybody's happy with that particular model,  
10 right?

11 A Right.

12 MR. KITCHINGS:

13 Okay. Thank you Chairman Helton. Thank  
14 you Mr. Gregoire. I have nothing  
15 further.

16 CHAIRMAN HELTON:

17 Ms. Dougherty?

18 MS. DOUGHERTY:

19 I have nothing further. Thank you.

20 CHAIRMAN HELTON:

21 Thank you, Mr. Gregoire.

22 A Thank you.

23 CHAIRMAN HELTON:

24 Ms. Chambers, according to the list of stipulates

1           that you gave this morning, do I, from my list,  
2           does that mean there's one other witness that you  
3           wish to cross from IgLou?

4   MS. CHAMBERS:

5           No, Commissioner, I don't believe we have any--I  
6           think we have stipulated all the remainder of  
7           IgLou's witnesses and have waived cross  
8           examination.

9   CHAIRMAN HELTON:

10           There was one I didn't hear the name this morning.  
11           I didn't have that name.

12   MS. DOUGHERTY:

13           It was the list I gave you--

14   MR. KITCHINGS:

15           Is that M. J. Shadowen.

16   MS. DOUGHERTY:

17           --yesterday, plus two additional ones this  
18           morning.

19   CHAIRMAN HELTON:

20           Okay.

21   MS. CHAMBERS:

22           I can read the names, if it would help.

23   CHAIRMAN HELTON:

24           That--no. That's fine. I just wanted to make



1 address?

2 A Yes. My name is Cynthia Cox. My business address  
3 is 675 West Peachtree Street in Atlanta, Georgia.

4 Q By whom are you employed Ms. Cox?

5 A I'm employed by BellSouth Telecommunications.

6 Q Are you the same Cynthia Cox who caused to be pre-  
7 filed some fourteen pages of direct testimony and  
8 eight pages of rebuttal testimony along with six  
9 exhibits?

10 A Yes, I am.

11 Q Do you have any additions, deletions or  
12 corrections to your testimony?

13 A No, I do not.

14 Q If I were to ask you the same questions as  
15 contained in those two sets of testimony, would  
16 your answers be the same?

17 A Yes, they would.

18 MR. KITCHINGS:

19 Chairman Helton, we would move admission  
20 of Ms. Cox's testimony, both the direct  
21 and rebuttal sets, along with the six  
22 exhibits that are attached to her  
23 rebuttal testimony, subject to cross  
24 examination.

1 CHAIRMAN HELTON:

2 So ordered.

3 MR. KITCHINGS:

4 Witness is available.

5 MR. AMLUNG:

6 Thank you. Thank you Commissioners.

7

8 CROSS EXAMINATION

9 BY MR. AMLUNG:

10 Q Ms. Cox, my name is Jonathan Amlung, I represent  
11 the Complainant in this case, IgLou Internet  
12 Services. Some questions have been asked earlier  
13 of witnesses about their background. Do you have  
14 any legal training?

15 A No, I do not.

16 Q Okay. Referring to your direct testimony, which  
17 has already been referred to in this proceeding,  
18 specifically on page 3. Do you have a copy of  
19 that in front of you?

20 A Yes, I do.

21 Q Okay. I may preface this just briefly. Normally,  
22 when I ask a question I'm already going to know  
23 the answer to it, but I may ask you a few  
24 questions today that I still have no idea what the

1 answers are. So, if you could just bear with me  
2 in that regard. On page 3, I believe the very--  
3 the second question on that page, starting at line  
4 11, you were asked, what is BellSouth.net, Inc.?  
5 And, your answer was, BellSouth.net, Inc., is a  
6 subsidiary of BellSouth EC Holdings, which in  
7 turn, I guess, is a wholly owned subsidiary of  
8 BellSouth Corporation. Is--could you expand on  
9 that answer for me? We've been having a great  
10 amount of difficulty in determining exactly what  
11 BellSouth.net, Inc., is and how it relates to  
12 BellSouth Telecommunications.

13 A Okay. BellSouth.net, Inc., is a subsidiary of  
14 BellSouth Corporation and its primary function as  
15 it relates to BellSouth Telecommunications, it  
16 provides certain equipment and services to  
17 BellSouth Telecommunications, which then BellSouth  
18 Telecommunications uses in the provision of  
19 unregulated Internet services.

20 Q Now, when you refer to equipment, what are you  
21 referring to?

22 A Examples would be routers or servers or things  
23 like that.

24 Q And, when you refer to services, exactly to what

1 are you referring?

2 A It could be engineering kind of services. I think  
3 they do some web site development kind of work,  
4 that type of thing.

5 Q In your personal knowledge, do you have a  
6 knowledge of every single service that is provided  
7 under--provided from that company--

8 A No. I do not--

9 Q --BellSouth.net, Inc.?

10 A --have personal knowledge of every single--

11 Q Who do they provide those services and equipment  
12 to?

13 A Well, they provide services to BellSouth  
14 Telecommunications, as I mentioned. They provide  
15 some to the BellSouth Foundation, to BellSouth  
16 Mobility, to other BellSouth affiliates, I think  
17 there was a complete list in one of our data  
18 responses.

19 Q Okay. Were you involved in answering those data  
20 responses?

21 A No. I was not.

22 Q I believe on page 3, line 21 of your testimony,  
23 you note that BST, being BellSouth  
24 Telecommunications, I'm assuming.

1 A Yes. That's correct.

2 Q And BellSouth.net, Inc., are distinct legal  
3 entities. Is there--are they totally separate and  
4 distinct with separate managerial staffs and  
5 employees?

6 A Yes. That's my understanding.

7 Q Okay. Does one company manage the other?

8 A No.

9 Q Have you reviewed all of the testimony that has  
10 been submitted in this case?

11 A Yes. I have.

12 Q Okay. And have you reviewed, specifically, Danny  
13 Gregoire's direct testimony?

14 A Yes. I have.

15 Q Have you reviewed also all of the exhibits  
16 provided in Danny Gregoire's direct testimony?

17 A Yes.

18 Q You probably won't have this in front of you.

19 But--

20 A No, I don't sir. I do have a copy, if it will  
21 help for me to get it.

22 Q Well, I may just--

23 MR. AMLUNG:

24 If I have permission to approach the

1 witness, I believe everyone else has a  
2 copy.

3 Q Exhibit 1 of Danny Gregoire's testimony.

4 MR. KITCHINGS:

5 Is that his direct or rebuttal, Mr.  
6 Amlung?

7 MR. AMLUNG:

8 I'm sorry. That's direct testimony.

9 MR. KITCHINGS:

10 Okay. Thank you.

11 Q Do you recognize that document at all ma'am?

12 A Yes. This is--was the attachment to his testimony  
13 that I recall.

14 Q And what is that document?

15 A It's a press release from BellSouth announcing the  
16 formation of BellSouth.net, Inc.

17 Q Does it appear to be a reasonable copy of the  
18 original press release of BellSouth?

19 A Yes. It seems to be.

20 Q Could you please read, I believe it's the third  
21 paragraph down.

22 A BellSouth.net is a wholly owned--is wholly owned  
23 by BellSouth EC Holdings, Inc., a subsidiary of  
24 BellSouth Corporation and will be managed by

1 BellSouth Telecommunications, Inc.

2 Q Okay. And just to restate, that press release did  
3 come from BellSouth?

4 A Yes.

5 Q On page 4 of your testimony you mention Computer  
6 II.

7 MR. AMLUNG:

8 And for the court reporter, that's Roman  
9 Numeral II.

10 Q I believe starting--it looks like line 19. Are  
11 you familiar with the Computer Inquiry  
12 proceedings?

13 A Yes. I'm generally familiar with them.

14 Q Could you tell me exactly or in your understanding  
15 what Computer II provided for?

16 A Computer Inquiry II provided for a model where the  
17 FCC looked at services that they considered to be  
18 basic services or more like traditional  
19 telecommunication services, if you will, and then  
20 enhanced services. And they developed a model  
21 that treated those differently for regulatory  
22 purposes.

23 Q Okay. Was that anything in Computer II about  
24 structural separation, to your knowledge?

1 A I'm not sure.

2 Q Are you familiar with Computer III proceedings?

3 A Yes. I'm generally familiar with those.

4 Q The Inquiry proceeding?

5 A Right.

6 Q What is your understanding of Computer III?

7 A What Computer Inquiry III did was looked at the  
8 provision of these services and reached the  
9 conclusion that we could provide those--and it was  
10 targeted to the regional Bell operating companies,  
11 mostly--but that we could provide these services,  
12 regulated and unregulated on an integrated basis,  
13 that is, we could provide them through the  
14 telephone company and we could joint market these  
15 services.

16 Q So, is it your understanding that a structurally  
17 separate affiliate is not required under Computer  
18 III? I may be paraphrasing?

19 A Yes. That is my understanding.

20 Q Okay. As far as you know, does BellSouth operate  
21 under Computer II rules or Computer III rules?

22 A Well, there could be some combination of the two.  
23 Computer Inquiry II, the distinction between the  
24 basic and the enhanced services, that would still

1 be in effect. Computer Inquiry III, which allows  
2 us to provide these on an integrated basis, we  
3 would also be operating under that.

4 Q Insofar as--and I'm not trying to pick on  
5 knowledge, I'm just trying to get a better  
6 understanding of your knowledge of this. Insofar  
7 as your understanding of the structural separation  
8 portions of Computer II and Computer III, do you  
9 know whether BellSouth is operating under one or  
10 the other or do you believe that they're mixing up  
11 portions of each one?

12 A We are operating under the Computer Inquiry III  
13 ability to provide these services on an integrated  
14 basis. So--

15 Q Okay. Is it your understanding that you cannot  
16 pick and choose between Computer II and Computer  
17 III, at least, insofar as structural separation  
18 requirements are concerned?

19 A I believe a company could elect to provide the  
20 services through a separate subsidiary or not.

21 Q Okay. Moving on to page 7 of your testimony, I  
22 believe starting on line 14 or thereabouts, you--  
23 well, it's actually line 12, you start talking  
24 about a two layer system of nonstructural

1 safeguards. Could you, again, explain the  
2 safeguards to which you are referring?

3 A Yes. The first which I referred to in my  
4 testimony is the comparable efficient  
5 interconnection or CEI, as it's referred to. And  
6 what this is is a requirement on BellSouth  
7 Telecommunications that we offer at tariff rates  
8 the services that we are going to use to provide  
9 our enhanced service. And so, that's what CEI  
10 plans get at that requirement. The second  
11 safeguard that I mentioned goes to, it's an  
12 accounting safeguard, and that gets at the issue  
13 of allocating cost between regulated and  
14 unregulated services and various affiliate  
15 transaction rules that would apply.

16 Q Do you have any knowledge of the purpose, the  
17 original purpose or the current purpose of CEI  
18 plans?

19 A CEI plans were there so that enhanced service  
20 providers that might be competing with a regional  
21 Bell operating company could be advised of  
22 availability of the tariff services that the RBOC  
23 is using to provide their enhanced service.

24 Q And when you speak of enhanced service providers,

1 does that include the sub-set Internet service  
2 providers?

3 A Yes. It would in this case.

4 Q Okay. What are the contents of CEI plan?

5 A I'm not--could you rephrase your question? I'm  
6 not sure what you mean?

7 Q Sure. Well, if--has your company filed a CEI  
8 plan, specifically, in regard to information  
9 services?

10 A Yes. We filed a number of CEI plans that cover  
11 those functionalities. They've ranged in--the  
12 last one we filed, specifically, regarding to  
13 ADSL, was in July of '98. And you would look at  
14 those and it basically tells the FCC, here are the  
15 tariff services that we plan to make use of to  
16 provide Internet services.

17 Q Are there specific contents that go into that CEI  
18 plan? However, are there mandates as far as  
19 parameters that need to be included in the CEI  
20 plan?

21 A Well, it would have to include all the tariff  
22 services that we would plan to purchase. As far  
23 as, if there's a prescribed format or something  
24 like that, I'm just not--I'm not sure about that.

1 Q Okay. Are you aware of any FCC rulings which  
2 define parameters of data or information that  
3 needed to be included in CEI plans?

4 A Not specifically, other than the requirement that  
5 it identify the tariff services that you are going  
6 to use.

7 Q You didn't draft the CEI plan for BellSouth, did  
8 you?

9 A No, I did not.

10 Q Or any CEI plan?

11 A No, I did not.

12 Q Okay. And you didn't include a copy of the CEI  
13 plan as an exhibit to your testimony, is that  
14 correct?

15 A I did not, no. I could provide it later, if that  
16 would be helpful.

17 Q From your understanding of how Computer III  
18 governs entities, specifically, RBOCs, it's my  
19 understanding that your testimony is that Computer  
20 III requires the CEI plans be filed by RBOCs, when  
21 I refer to RBOCs, that's Regional Bell Operating  
22 Company, is that correct?

23 A Yes. That's correct.

24 Q Do CLECs, and that term has been mentioned

1 earlier, competitive local exchange carriers, have  
2 to file CEI plans?

3 A I'm not aware that they do.

4 Q Okay. So, you've mentioned two layers of  
5 protection. Are these the only two layers of  
6 protection that your testimony centers around,  
7 that being the CEI plans and the accounting  
8 safeguards?

9 A There is one other measure of protection in my  
10 testimony and that's the customer proprietary  
11 network information, or referred to as CPNI, and  
12 what that does is, it requires us to get  
13 affirmative permission from a customer to make use  
14 of information that we would have, because we're  
15 providing them telecommunication service, that  
16 before we can use that to market them  
17 nontelecommunication services, we must get the  
18 customer's approval. And so, that's another  
19 safeguard that's mentioned in my testimony.

20 Q Okay. Moving on to the accounting safeguards. I  
21 believe you refer to those in line 19 of page 7 as  
22 the second layer of nonstructural safeguards  
23 imposed on RBOCs. Would you describe how the  
24 accounting safeguards in particular are used to

1 prevent discrimination and cross-substitution?

2 A I can generally, and I know Mr. Lohman can go into  
3 greater detail on this particular topic. But  
4 generally speaking, the cost allocation rules  
5 would require that--and I'll give an example, if  
6 the service representative is selling regulated  
7 and unregulated services, the time has to be  
8 allocated, the cost has to be allocated between  
9 those buckets of services. And that's to prevent  
10 the regulated service from cross-subsidizing the  
11 unregulated service or vice versa, I guess. But  
12 that's generally how they work.

13 Q Do you know where those accounting safeguards are  
14 located?

15 A Pardon me?

16 Q Do you know where those accounting safeguards are  
17 located?

18 A They're in the joint cost order.

19 Q Do you have any idea where they would be located  
20 as far as a citation, say, if you had to refer to  
21 them?

22 A I can give you the joint cost docket number. Is  
23 that what you--

24 Q I mean--

1 A I'm not sure what you're asking for.

2 Q --does the term Part 64 Rules and Part 32 Rules  
3 mean anything to you?

4 A Yes. Generally.

5 Q You sound a little vague on those.

6 A Well, like I said, Mr. Lohman can really go into  
7 greater detail on the specifics of the accounting  
8 safeguards.

9 Q But you did make several assertions that these  
10 safeguards are available. You're saying that you  
11 don't know the details of these safeguards that  
12 you're asserting are available?

13 A No. I said I couldn't give you a specific cite.  
14 You were asking for a specific cite.

15 Q But when you said earlier that you were  
16 referring--you would defer to Mr. Lohman and he  
17 would be the one to ask specifics about it, were  
18 you then saying that you're not aware of the  
19 specifics involved in the accounting safeguards?

20 A I said I'm generally familiar with the goal and  
21 how these safeguards work and then Mr. Lohman can  
22 go into greater detail.

23 Q Meaning that you have no particular knowledge of  
24 the specifics in these accounting safeguards?

1 A Mr. Lohman can go into greater detail on these.  
2 I'm sorry. I mean, I'm generally familiar with  
3 them. Yes.

4 Q I hate to keep repeating--

5 A Okay.

6 Q --questions. But, you, yourself--Mr. Lohman  
7 doesn't exist for purposes of this question.

8 A Okay.

9 Q You, yourself, you have no specific knowledge of  
10 those accounting safeguards and how they interact  
11 with each other or how they're implemented by the  
12 FCC?

13 A Well, I don't know when you say specific. I mean,  
14 I know generally what they are. So, if you're  
15 looking--can I describe the specifics in great  
16 detail of them, then, no. I will say, no.

17 Q I'd like to direct your attention to page 8, line  
18 15--I keep getting these lines wrong all day--but  
19 it appears that in there--in your testimony you  
20 make the assertion that one of the main objectives  
21 of these safeguards, I assume you're just  
22 referring to safeguards in general, is to  
23 prevent--it's 14 actually--13 or 14, is to prevent  
24 RBOCs from using the local exchange market to the